

**FEDERAL RESERVE BANK
OF NEW YORK**

Circular No. 6885
January 25, 1972

BANK HOLDING COMPANIES
Hearing on Armored-Car and Courier Services
Rescheduled to February 10

*To All Bank Holding Companies, and Others Concerned,
in the Second Federal Reserve District:*

Following is the text of a statement issued January 20 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today scheduled a hearing to commence February 10 on whether armored car and courier services are closely related to banking under the 1970 amendments to the Bank Holding Company Act. A hearing on this proposal had previously been scheduled for January 19.

The hearing, to be conducted by a hearing officer appointed by the Board, will begin at 10 a.m. in Room 1202 of the Federal Reserve Building in Washington.

Courier service will be considered first at the hearing, followed by consideration of armored car service. The Board has authorized the hearing officer to resolve all matters relating to the number and identity of participants, time to be accorded each witness, the receipt of evidence, expert opinion, rebuttal, and written and oral arguments.

The Board on January 13 announced postponement of a hearing that had been scheduled for January 19 before available members of the Board, to consider the question of armored car and courier services as closely related to banking.

In addition to rescheduling the hearing, the Board denied requests for a formal hearing before a hearing examiner and for access to intra-agency memoranda considered by the Board in deciding to propose that bank holding companies be allowed to engage in armored car and courier services.

A copy of the Board of Governors' order rescheduling the hearing is printed below.

Alfred Hayes,
President.

(Reg. Y)

BANK HOLDING COMPANIES
Hearing Regarding Courier and Armored Car Services

On January 12, 1972, the Board of Governors announced postponement of a scheduled January 19 hearing to consider whether armored car and courier services are closely related to banking under the 1970 Amendments to the Bank Holding Company Act. The hearing has been rescheduled to commence at 10:00 a.m., Thursday, February 10, 1972, in Room 1202 of the Federal Reserve Building, Washington, D.C., before a hearing officer to be appointed by the Board.

In addition to rescheduling the hearing, the Board acted upon three motions by parties who have asked to appear at the hearing. Those motions and the Board's determinations with respect to them are as follows:

Separation of issues. On December 13, 1971, Wachovia Corporation and Wachovia Courier Corporation filed a "Motion to Provide Separate Consideration of Armored Car and Courier Services Proposed Amendment". The Board believes that separate consideration will facilitate a sharpening of the issues and avoid possible confusion that might otherwise result from a joint consideration. Accordingly, separate but consecutive hearings will be held.

(Over)

The subject of courier services will be considered beginning at 10:00 a.m. on February 10; the subject of armored car services will be considered following completion of the consideration of courier services.

Type of hearing. On December 14, 1971, the National Courier Association and the National Armored Car Association filed a petition for reconsideration by the Board of its denial of a request that these hearings be conducted under §§ 556 and 557 of Title 5, United States Code. (For the Board's order denying the original request, see 36 F.R. 23256.) On January 11, 1972, the Independent Bankers Association of America also requested the Board to conduct the hearing under §§ 556 and 557.

The Board is authorized by § 4(c)(8) of the Bank Holding Company Act to permit bank holding companies to engage in an activity that "the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." In determining whether a particular activity is a proper incident to banking or managing or controlling banks, the Board is required to consider whether performance of the activity by an affiliate of a holding company can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

In the subject hearings, the Board proposes to determine whether courier services and/or armored car services are closely related to banking, and, if so, whether the usual procedures of § 225.4(b)(1) and (2) of Regulation Y for entry by a holding company into activities on the list of activities specified in § 225.4(a) should apply to those services. The Board will not decide in these hearings whether any particular holding company may engage in courier or armored car services.

In the Board's judgment, the regulatory actions under consideration in the subject proceedings do not constitute an order subject to the judicial review provisions of section 9 of the Bank Holding Company Act. Further, the Holding Company Act does not require a formal hearing on the record with respect to such regulatory actions; and no considerations or arguments have been presented to the Board that, in the Board's judgment, warrant a formal hearing on the issues involved in the hearings, as a matter of Board discretion. Accordingly, the motions for formal hearings are denied.

Access to memoranda. The National Courier Association, the National Armored Car Association, and the Independent Bankers Association have also requested access to intra-agency memoranda considered by the Board in deciding to announce its proposed rulemaking regarding courier and armored car services.

Section 552 of Title 5 specifically exempts from public inspection "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency". The Board believes that the staff memoranda involved would not be available to the Associations in the event of litigation. Moreover, the Board's knowledge and experience in economics, the payments mechanism, banking, and supervision of banks are reflected in the Board's proposal but are not reflected in said staff memoranda, so that such memoranda cannot be considered to be the basis for the Board's announced proposal for rulemaking.

In these circumstances, the Board believes that there is no legal requirement compelling production and that petitioners' access to the staff memoranda would not contribute to their knowledge of relevant facts or to their understanding of the Board's rationale in this matter. Accordingly, the requests for access to them are denied.

Other matters. Although the hearing will not be conducted under §§ 556 and 557 of Title 5, it will be a more formal type proceeding than if conducted as previously announced before available members of the Board. The hearing officer will have legal training and skills. He will be qualified to establish orderly procedures; limit presentations in an appropriate manner; exclude irrelevant, immaterial, repetitious, or cumulative material; distinguish between fact and opinion evidence; and accord appropriate weight to material presented.

Accordingly, the Board has authorized the hearing officer to resolve all matters relating to the number and identity of participants, time accorded to participants, the receipt of evidence, expert opinion, rebuttal, written and oral arguments and other presentations, and the desirability and use of a pre-hearing conference.

The hearing officer will make recommendations to the Board, with supporting findings and reasons, on the basis of the subject hearings and material filed in the proceedings. However, the Board will make the final determinations whether, and for what reasons, to adopt its proposal or any modification thereof.