FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 8057
February 18, 1977]

PROPOSED AMENDMENT TO REGULATION Y

Presumption of Continued Control of Shares, Assets, or Activities Transferred by Bank Holding Companies

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

The Board of Governors of the Federal Reserve System has proposed an amendment to its Regulation Y—Bank Holding Companies—to clarify the presumption of continued control by bank holding companies over shares, assets, or activities that are transferred to certain persons or entities.

Printed below is the text of the Board of Governors' proposal. Comments thereon should be submitted by March 15, and may be sent to our Domestic Banking Applications Department.

PAUL A. VOLCKER,
President.

(Reg. Y)

BANK HOLDING COMPANIES

[Docket No. 0083]

Notice of Proposed Rulemaking Relating to Presumption of Continued Control of Transferred Assets or Activities

Section 2(g)(3) of the Bank Holding Company Act (12 U.S.C. § 1841(g)(3)), creates a presumption that shares transferred by a bank holding company to any transferee that is indebted to the transferor, or that has an officer, director, or other management interlock with the transferor, are deemed to be indirectly owned or controlled by the transferor, unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee. Since the enactment of section 2(g)(3) in 1966, the Board and its staff have given certain interpretations of its scope that the instant proposed regulation is intended to codify. Thus, the proposed regulation reflects the Board's previously stated view that a transfer of shares to an officer, director, or trustee of the transferor (as distinguished from a transfer to an entity having an officer, director or trustee *in common with* the transferor) gives rise to the presumption of continued control by the transferor.[1] Similarly, the Board has treated the statutory presumption as being applicable where the described relationship involves a subsidiary of a transferor or transferee.[2] In addition, other questions have arisen in the application of section 2(g)(3)—for example, whether the presumption applies in the case of asset transfers, including interests in partnerships. Board staff has taken the position that certain of such transfers are covered. The proposed amendment to Regulation Y is intended to codify these earlier constructions of the Act and to remove uncertainties.

In administering section 2(g)(3), which the Board views as a useful means of assuring the completeness of divestitures, the Board has recognized the possibility that transfers may occur that do not fall within the literal language of section 2(g)(3), but that, nonetheless, may involve or permit continued control of the transferred assets by the transferor. In view of the principal purpose of the Act, to separate banking and commerce, the Board believes that such transfers should be subject to scrutiny by the Board to ensure that divestiture requirements have been complied with before there is any interruption in the divesting company's status with respect to the divested property. The proposed amendment to Regulation Y, which would be promulgated pursuant to the Board's authority under section 5(b) of the Act (12 U.S.C. § 1844(b)), to issue such regulations and orders as may be necessary to administer and carry out the purposes of the Act and to prevent evasions thereof, would extend the circumstances under which a presumption of continued control will arise, in the following principal respects:

—It would make clear that the presumption arises where a covered relationship involves a parent or subsidiary of the transferor or transferee.

[1] See Moody Foundation, 33 *Federal Register* 866 (1968); Mercantile National Corporation, 40 *Federal Register* 24771 (1975).

[2] see, *e.g.*, NCNB Corp., 39 *Federal Register* 44513 (1974).

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—It would make clear that the presumption applies to transfers of assets (which is intended to include interests in partnerships).

—It would cause the presumption to arise where a covered relationship has existed or is created within a year of the transfer.

—It would extend the relationships giving rise to the presumption to include interlocks involving partners and honorary or advisory officials, and situations where the transferee controls, is controlled by, or is under common control with the transferor, or in which the transferor or transferee holds more than five per cent of a class of securities of the other.

—It would presume that any company that has registered as a bank holding company continues to be such until the Board determines that it no longer is a bank holding company.

For the foregoing reasons, and pursuant to its authority under section 5(b) of the Bank Holding Company Act (12 U.S.C. § 1844(b)), the Board proposes to amend section 225.2 of its Regulation Y by adding a new paragraph (d), to read as follows:

SECTION 225.2—DETERMINATIONS REGARDING CONTROL

* * *

(d) **Presumption of Continued Control of Transferred Shares, Assets or Activities.** (1) Shares, assets or activities transferred by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee having a covered relationship with the transferor shall be presumed to continue to be controlled by the transferor from the date of the transfer. For the purposes of this paragraph, a "covered relationship" shall be deemed to exist between a transferor and transferee if, at any time during a period from one year prior to the transfer to one year after the transfer:

(i) the transferee was indebted to the transferor;

(ii) the transferee was a management official or beneficiary of the transferor, or had a management official or beneficiary in common with the transferor;

(iii) the transferee was in control of, controlled by or under common control with the transferor; or

(iv) the transferee or transferor was the holder of more than five per cent of any class of voting securities of the other.

(2) A company that has registered with the Board as a bank holding company shall be presumed to continue to be a bank holding company, notwithstanding any change in its interest in or relationship with any bank, except as provided in subparagraph (3).

(3) The presumption arising under subparagraph (1) of this paragraph shall continue in effect from as of the date of the transfer, without any order or determination by the Board, until and unless the Board issues a written determination, after opportunity for hearing, that the transferor is not in fact capable of controlling either the transferee or the transferred shares, assets or activities. The presumption arising under subparagraph (2) shall continue in effect from the date of registration until and unless the Board issues a written determination that the company is no longer a bank holding company. Any interested person may at any time apply to the Board for such a determination, and the burden of proof shall be upon the party requesting the determination. Where application has been made for a determination under subparagraph (2) that a company is no longer a bank holding company, the application shall be deemed to have been granted unless the applicant is informed otherwise prior to the 90th day after receipt of the application by the Secretary of the Board.

(4) For the purposes of this paragraph and section 2(g)(3) of the Act:

(i) the terms "transferor" and "transferee" shall include, but not be limited to, any subsidiary of a transferor or transferee and any company of which a transferor or transferee is a subsidiary;

(ii) the term "management official" shall include an officer, director, trustee and partner, as well as any person performing functions normally associated with such position or holding such a position in an advisory or honorary capacity;

(iii) the term "holder" shall include, but not be limited to, any person who owns (either beneficially or of record), controls or has power to vote a security; and

(iv) a person or company shall be deemed to "control" another person or company if, without limitation, one or more of the relationships described in section 2(a)(2)(A) or (B) of the Act, or in the presumptions of control described in paragraphs (a) and (b) above, exists between them, or if such person or company exercises a controlling influence over the management or policies of the other.

Interested persons are invited to submit their views or arguments with respect to this proposal. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than March 15, 1977. All material submitted should include the Docket Number R-0083. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

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