A.t. Circ No. 8515

February 8, 1979

To the Addressee:

Enclosed are copies of pamphlets containing Regulation Q, "Interest on Deposits," and Regulation Y, "Bank Holding Companies," of the Board of Governors of the Federal Reserve System.

The pamphlet containing Regulation Q, as amended effective December 6, 1978, replaces the December 4, 1975 printing of the regulation, together with all amendments to the regulation through December 6, 1978. Please retain the supplement effective June 1, 1978.

The pamphlet containing Regulation Y, as amended effective April 5, 1978, replaces the June 24, 1974 printing of the regulation, together with all amendments to the regulation through April 5, 1978. Please retain the amendment effective January 1, 1979.

Additional copies of the two pamphlets are available upon request.

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

At-air hs. 8515

BOARD OF GOVERNORS
of the
FEDERAL RESERVE SYSTEM

INTEREST ON DEPOSITS

REGULATION Q

(12 CFR 217)

As amended effective December 6, 1978

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

DECEMBER 1978

CONTENTS

REGULATION Q

(12 CFR 217)

As amended effective December 6, 1978

INTEREST ON DEPOSITS*

SECTION 217.0—SCOPE OF PART

(a) This Part is issued under authority of provisions of section 19 of the Federal Reserve Act which, together with related provisions of law, are cited in the Appendix.

(b) This Part relates to the payment of deposits and interest thereon by member banks of the Federal Reserve System and not to the computation and maintenance of the reserves which member banks are required to maintain against deposits. The rules concerning reserves of member banks are contained in Part 204 of this chapter.

(c) The provisions of this Part do not apply to any deposit which is payable only at an office of a member bank located outside of the States of the United States and the District of Columbia.

SECTION 217.1—DEFINITIONS

(a) **Demand deposits.** The term "any deposit which is payable on demand", hereinafter referred to as a "demand deposit", includes every deposit which is not a "time deposit" or "savings deposit", as defined in this section.

(b) **Time deposits.** The term "time deposits" means "time certificates of deposit" and "time deposits, open account", as defined in this section.

(c) **Time certificates of deposit.** The term "time certificate of deposit" means a deposit evidenced by a negotiable or non-negotiable instrument which provides on its face that the amount of such deposit is payable to bearer or to any specified person or to his order:

(1) On a certain date, specified in the instrument, not less than 30 days after date of the deposit, or

(2) At the expiration of a certain specified time not less than 30 days after the date of the instrument, or

(3) Upon notice in writing which is actually required to be given not less than 30 days before the date of repayment,[1] and

(4) In all cases only upon presentation and surrender of the instrument.

(d) **Time deposits, open account.** The term "time deposit, open account" means a deposit, other than a "time certificate of deposit", with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than 30 days after the date of the deposit,[2] or prior to the expira-

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* The text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 217; cited as 12 CFR 217. The words "this Part", as used herein, mean Regulation Q.

[1] A deposit with respect to which the bank merely reserves the right to require notice of not less than 30 days, before any withdrawal is made is not a "time certificate of deposit" within the meaning of the above definition.

[2] Deposits, such as Christmas club accounts and vacation club accounts, which are made under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than 3 months constitute "time deposits, open account", even though some of the deposits are made within 30 days from the end of the period.

tion of the period of notice which must be given by the depositor in writing not less than 30 days in advance of withdrawal.[3]

(e) **Savings deposits.** The term "savings deposit" means a deposit—

(1) That consists of funds deposited to the credit of or in which the entire beneficial interest is held by one or more individuals, or of a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit; [4] or that consists of funds deposited to the credit of or in which the entire beneficial interest is held by the United States, any State of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof; or that consists of funds deposited to the credit of, or in which any beneficial interest is held by a corporation, association, or other organization not qualifying above to the extent such funds do not exceed $150,000 per such depositor at a member bank; and

(2) With respect to which the depositor is not required by the deposit contract but may at any time be required by the bank to give notice in writing of an intended withdrawal not less than 30 days before such withdrawal is made [5] and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(3) In those States where banks are permitted to offer deposits subject to negotiable orders of withdrawal, such deposits may be maintained if such deposits consist of funds deposited to the credit of or in which the entire beneficial interest is held by one or more individuals, or a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit. Deposits in which any beneficial interest is held by a corporation, partnership, association or other organization operated for profit or not operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes may not be classified as deposits subject to negotiable orders of withdrawal.

(f) **Deposits as including certain promissory notes and other obligations.** For the purposes of this Part, the term "deposits" also includes any member bank's liability on any promissory note, acknowledgment of advance, due bill, or similar obligation (written or oral) that is issued or undertaken by a member bank principally as a means of obtaining funds to be used in its banking business, except any such obligation that:

(1) Is issued to (or undertaken with respect to) and held for the account of (i) a bank or an institution the time deposits of which are exempt from § 217.7 Pursuant to § 217.3(g), or (ii) the United States or an agency thereof, or the Government Development Bank for Puerto Rico;

(2) Evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase;

(3) (i) Bears on its face, in bold-face type the following:

"This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation";

is subordinated to the claims of depositors, is unsecured, and is ineligible as collateral for a loan by the issuing bank and also expressly states said provisions on its face; has an original maturity of at least seven years, or, in the case of an obligation or issue that provides for any type of scheduled repayments of principal, has an average maturity [6] of at least seven years [7] and provides that once any such repayment of principal begins, all scheduled repayments shall be made at least annually and the amount repaid in each

[3] A deposit with respect to which the bank merely reserves the right to require notice of not less than 30 days before any withdrawal is made is not a "time deposit, open account", within the meaning of the above definition.

[4] Deposits in joint accounts of two or more individuals may be classified as savings deposits if they meet the other requirements of the above definition. Deposits of a partnership operated for profit may also be classified as savings to the extent such deposits do not exceed $150,000 per partnership at a member bank.

[5] The exercise by the bank of its rights to require such notice shall not cause the deposit to cease to be a savings deposit.

[6] The "average maturity" of an obligation or issue repayable in scheduled periodic payments shall be the weighted average of the maturities of all such scheduled repayments.

[7] In a serial issue the member bank may offer no note with maturity of less than five years.

year is no less than in the prior year; is issued subject to a requirement that no repayment (other than a regularly scheduled repayment already approved by the appropriate Federal bank regulatory agency), including but not limited to a payment pursuant to acceleration of maturity, may be made without the prior written approval of the appropriate Federal bank regulatory agency; [8] is in an amount of at least $500, *Except,* That the appropriate Federal bank regulatory agency may approve the issuance of an obligation that is less than $500 if such lesser amount is necessary (a) to satisfy the preemptive rights of shareholders in the case of a convertible debt obligation, (b) to maintain a ratable unit offering to holders of preemptive rights in the case of an obligation issued exclusively as part of a unit including shares of stock which are subject to such preemptive rights, or (c) to satisfy shareholders' ratable claims in the case of an obligation issued wholly or partially in exchange for shares of voting stock or assets pursuant to a plan of merger, consolidation, reorganization, or other transaction where the issuer will acquire either a majority of such shares of voting stock or all or substantially all of the assets of the entity whose assets are being acquired; and has been approved by the appropriate Federal bank regulatory agency as an addition to the capital structure of the issuing bank; or (i) meets all of the requirements in the preceding clause except the maturity requirement or the requirement that scheduled repayments shall be in amounts at least equal to those made in a previous year; and with respect to which the appropriate Federal bank regulatory agency has determined that exigent circumstances require the issuance of such obligations without regard to the provisions of this Part; or (ii) was issued or publicly offered before June 30, 1970, with an original maturity of more than two years; or

(4) Arises from a borrowing by a member bank from a dealer in securities, for one business day, of proceeds of a transfer of deposit credit in a Federal Reserve Bank (or other immediately available funds), commonly referred to as "Federal funds", received by such dealer on the date of the loan in connection with clearance of securities transactions.

[8] For the purposes of this Part, the "appropriate Federal bank regulatory agency" is the Comptroller of the Currency in the case of a national bank and the Board of Governors in the case of a State member bank.

This paragraph shall not, however, affect (i) any instrument issued before June 27, 1966, or (ii) any instrument that evidences an indebtedness arising from a transfer of assets under repurchase agreement issued before July 25, 1969.

(g) **Multiple maturity time deposit.** The term "multiple maturity time deposit" means any time deposit (1) that is payable at the depositor's option on more than one date, whether on a specified date or at the expiration of a specified time after the date of deposit (e.g., a deposit payable at the option of the depositor either three months or six months after the date of deposit), (2) that is payable after written notice of withdrawal, or (3) with respect to which the underlying instrument or contract or any informal understanding or agreement provides for automatic renewal at maturity.

SECTION 217.2—DEMAND DEPOSITS

(a) **Interest prohibited.** Except as provided by section 19 of the Federal Reserve Act, no member bank of the Federal Reserve System shall, directly or indirectly, by any device whatsoever, pay any interest on any demand deposit.

(b) **Meaning of interest.** Within this Part, any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit shall be considered interest.

SECTION 217.3—INTEREST ON TIME AND SAVINGS DEPOSITS

(a) **Maximum rate.** Except as provided in this section, no member bank shall, directly or indirectly, by any device whatsoever, pay interest on any time or savings deposit at a rate in excess of such applicable maximum rate as the Board of Governors of the Federal Reserve System shall prescribe from time to time in § 217.7. In ascertaining the rate of interest paid, the effects of compounding of interest may be disregarded.

(b) **Modification of contracts to conform to regulation.** No certificate of deposit or other contract shall be renewed or extended unless it be modified to conform to the provisions of this Part, and every member bank shall take such action as may be necessary, as soon as possible consistently with its contractual obligations, to bring all of its outstanding certificates of deposit or

other contracts into conformity with the provisions of this Part.

(c) **Member banks limited to maximum rate for State banks.** The rate of interest paid by a member bank upon a time deposit or savings deposit shall not in any case exceed (1) the applicable maximum rate prescribed pursuant to the provisions of paragraph (a) of this section, or (2) the applicable maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State in which such member bank is located, whichever may be less.

(d) **Grace periods in computing interest on savings deposits.** A member bank may pay interest on a savings deposit received during the first 10 calendar days of any calendar month at the applicable maximum rate prescribed pursuant to paragraph (a) of this section calculated from the first day of such calendar month until such deposit is withdrawn or ceases to constitute a savings deposit under the provisions of this Part, whichever shall first occur; and a member bank may pay interest on a savings deposit withdrawn during its last 3 business days of any calendar month ending a regular quarterly or semiannual interest period at the applicable maximum rate prescribed pursuant to paragraph (a) of this section calculated to the end of such calendar month.

(e) **Computation of interest.** In the computation of simple daily interest, the time factor should be expressed as a fraction in which the actual number of days the funds earn interest is the numerator, and the denominator is either 360, 365, or, in a leap year, 366. However, when a deposit matures in one month (or multiples thereof), the bank may use 30 days in the numerator (or corresponding multiples thereof).

(f) **No interest after maturity or expiration of notice.** After the date of maturity of any time deposit, such deposit is a demand deposit, and no interest may be paid on such deposit for any period subsequent to such date. After the expiration of the period of notice given with respect to the repayment of any time deposit or savings deposit, such deposit is a demand deposit and no interest may be paid on such deposit for any period subsequent to the expiration of such notice, except that, if the owner of such deposit advise the bank in writing that the deposit will not be withdrawn pursuant to such notice or that the deposit will thereafter again be subject to the contract or requirements applicable to such deposit, the deposit will again constitute a time deposit or savings deposit, as the case may be, after the date upon which such advice is received by the bank. On each certificate, passbook, or other document representing a time deposit, the bank shall have printed or stamped a conspicuous statement indicating that no interest will be paid on the deposit after the maturity date or, in the case of a time deposit that is automatically renewable, a conspicuous statement indicating that the contract will be renewed automatically upon maturity, and indicating the terms of such renewal.

(g) **Time deposits of foreign governmental entities and international organizations.** Section 217.7 does not apply to the rate of interest that may be paid by a member bank on a time deposit having a maturity of 2 years or less and representing funds deposited and owned by (1) a foreign national government, or an agency or instrumentality thereof [9] engaged principally in activities which are ordinarily performed in the United States by governmental entities, (2) an international entity of which the United States is a member, or (3) any other foreign, international, or supranational entity specifically designated by the Board as exempt from § 217.7. All certificates of deposit issued by member banks to such entities on which the contract rate of interest exceeds the maximum prescribed under § 217.7 shall provide that (1) in the event of transfer, the date of transfer, attested to in writing by the transferor, shall appear on the certificate, and (2) the maximum rate limitations of § 217.7 in effect at the date of issuance of the certificate shall apply to the certificate for any period during which it is held by a person other than an entity exempt therefrom under the foregoing sentence.[10] Upon the presentment of such a certificate for payment, the bank may pay the holder the contract rate

[9] Other than States, provinces, municipalities or other regional or local governmental units, or agencies or instrumentalities thereof.

[10] A new certificate not maturing prior to the maturity date of the original certificate may be issued by the member bank to the transferee, in which event the original must be retained by the bank. The new certificate may not provide for interest after the date of transfer at a rate in excess of the applicable maximum rate authorized by § 217.7 as of the date of issuance of the original certificate.

of interest on the deposit for the time that the certificate was actually owned by an entity so exempt.

SECTION 217.4—PAYMENT OF TIME DEPOSITS BEFORE MATURITY

(a) **Time deposits payable on a specified date.** No member bank shall pay any time deposit, which is payable on a specified date, before such specified date, except as provided in paragraph (d) of this section.

(b) **Time deposits payable after a specified period.** No member bank shall pay any time deposit, which is payable at the expiration of a certain specified period, before such specified period has expired, except as provided in paragraph (d) of this section.

(c) **Time deposits payable after a specified notice.** No member bank shall pay any time deposit, with respect to which notice is required to be given a certain specified period before any withdrawal is made, until such required notice has been given and the specified period thereafter has expired, except as provided in paragraph (d) of this section.

(d) **Penalty for early withdrawals.** Where a time deposit, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that currently prescribed in § 217.7 for a savings deposit: *Provided,* That the depositor shall forfeit three months of interest payable at such rate If, however, the amount withdrawn has remained on deposit for three months or less, all interest shall be forfeited. Where necessary to comply with the requirements of this paragraph, any interest already paid to or for the account of the depositor shall be deducted from the amount requested to be withdrawn.[11] Any amendment of a time deposit contract that results in an increase in the rate of interest paid or in a reduction in the maturity of the deposit constitutes a payment of the time deposit before maturity. *Provided further,* That Investment Certificates issued in negotiable form by a member bank pursuant to subpart 3 of § 217.7(b) may not be paid before maturity. This provision does not prevent a member bank from arranging the sale or purchase of such a certificate on behalf of the holder or prospective purchaser of a certificate issued under that subpart. A member bank may not be paid before maturity. This provision does not prevent a member bank from arranging the sale or purchase of such a certificate on behalf of the holder or prospective purchaser of a certificate issued under that subpart. A member bank may not, however, repurchase such certificates for its own account. *Provided further,* That a time deposit may be paid before maturity without a reduction or forfeiture of interest as prescribed by this paragraph in the following circumstances:

(1) Where a member bank pays all or a portion of a time deposit upon the death of any owner of the time deposit funds;[11a]

(2) Where a member bank pays all or a portion of a time deposit representing funds contributed to an Individual Retirement Account or a Keogh (H.R. 10) plan established pursuant to 26 U.S.C. (I.R.C. 1954) § § 401, 408 when the individual for whose benefit the account is maintained attains age 59½ or is disabled (as defined in 26 U.S.C. (I.R.C. 1954) § 72 (m)(7) or thereafter; or

(3) Where a member bank pays that portion of a time deposit on which Federal deposit insurance has been lost as the result of the merger of two or more Federally insured banks in which the depositor previously maintained separate time deposits, for a period of one year from the date of the merger.

[11] The provisions of this paragraph apply to all time deposit contracts entered into after July 5, 1973, and to all existing time deposit contracts that are extended or renewed (whether by automatic renewal or otherwise) after such date, and to all time deposit contracts that are amended after such date so as to increase the rate of interest paid. All contracts not subject to the provisions of this paragraph shall be subject to the restrictions of § 217.4(d) in effect prior to July 5, 1973, which permitted payment of a time deposit before maturity only in an emergency where necessary to prevent great hardship to the depositor, and which required the forfeiture of accrued and unpaid interest for a period of not less than 3 months on the amount withdrawn if an amount equal to the amount withdrawn had been on deposit for 3 months or longer, and the forfeiture of all accrued and unpaid interest on the amount withdrawn if an amount equal to the amount withdrawn had been on deposit less than 3 months.

[11a] For the purposes of this provision, an "owner" of time deposit funds is any individual who at the time of his or her death has full legal and beneficial title to all or a portion of such funds or, at the time of his or her death, has beneficial title to all or a portion of such funds and full power of disposition and alienation with respect thereto.

Under a time deposit agreement where subsequent deposits reset the maturity of the entire account, each deposit maintained in the account for at least a period equal to the original maturity of the deposit may be regarded as having matured individually and been redeposited at intervals equal to such period. When a time deposit is payable only after notice, for funds on deposit for at least the notice period, the penalty for early withdrawal shall be imposed for at least the notice period.

(e) **Disclosure of early withdrawal penalty.** At the time a depositor enters into a time deposit contract with a member bank, the bank shall provide a written statement of the effect of the penalty prescribed in paragraph (d) of this section, which shall (1) state clearly that the customer has contracted to keep his funds on deposit for the stated maturity, and (2) describe fully and clearly how such penalty provisions apply to time deposits in such bank, in the event the bank, notwithstanding the contract provisions, permits payment before maturity. Such statements shall be expressly called to the attention of the customer. Written statements made with respect to negotiable Investment Certificates issued by a member bank pursuant to subpart 3 of § 217.7(b) shall state clearly that no payment before maturity will be permitted under any circumstances. Such statements shall be expressly called to the attention of the customer. In addition, every negotiable Investment Certificate shall state conspicuously on its face that, "This time deposit cannot be paid prior to maturity."

(f) **Loans upon security of time deposits.** A member bank may make a loan to the depositor upon the security of his time deposit provided that the rate of interest on such loan shall be not less than 1 per cent per annum in excess of the rate of interest on the time deposit.

SECTION 217.5—WITHDRAWAL OF SAVINGS DEPOSITS

(a) **Requirements regarding notice of withdrawal.** Whether or not interest is paid, no member bank shall require or waive notice of withdrawal as to any amount or percentage of the savings deposit of any depositor unless it shall similarly require or waive such notice as to the same amount or percentage of the savings deposits of every other depositor which are subject to the same contractual provisions with respect to notice of withdrawal. If a member bank, without requiring notice of withdrawal, pays interest that has accrued on a savings deposit during the preceding interest period, it shall, upon request and without requiring such notice, pay interest that has accrued during said period on the savings deposits of every other depositor. No member bank shall change its practice with respect to the requiring or waiving of notice of withdrawal of savings deposits for the purpose of discriminating in favor of or against any depositor or depositors, and no such change of practice shall be made except pursuant to duly recorded action of the bank's board of directors or a properly authorized committee thereof.

(b) **Loans on security of savings deposits.** If it is not the practice of a member bank to require notice of withdrawal of savings deposits, no restrictions are imposed by this Part upon loans by such bank to its depositors upon the security of such deposits. If it is the practice of a member bank to require notice of withdrawal of a savings deposit, such bank may make loans to a depositor upon the security of such deposit, but the rate of interest on such loans shall be not less than 1 per cent per annum in excess of the rate of interest paid on such deposit.

(c) **Manner of payment of savings deposits.**

(1) Subject to the provisions of subparagraphs (2) and (3) of this paragraph, a member bank may permit withdrawals to be made from a savings deposit only through payment [12] to the depositor himself (but not to any other person whether or not acting for the depositor), except

(i) where the deposit is represented by a passbook, to any person presenting the passbook; [12]

(ii) to any executor, administrator, trustee, or other fiduciary holding the savings deposit as part of a fiduciary estate, or to a person, other than the bank, holding a general power of attorney granted by the depositor;

(iii) to any person, including the bank, that has extended credit to the depositor on the security of the savings deposit, where such payment is made in order to enable the creditor to realize upon such security;

(iv) pursuant to the order of a court of competent jurisdiction;

[12] Payment from a savings deposit or presentation of a passbook may be made over the counter, through the mails, or otherwise.

(v) upon the death of the depositor, to any person authorized by law to receive the deposit;

(vi) interest paid to a third person pursuant to written instruction or assignment by the depositor accepted by the bank, and placed on file therein; or

(vii) pursuant to nontransferable withdrawal orders or authorizations received from a depositor by a member bank for the payment of amounts from such deposits to third parties, including the bank (except as prohibited by subparagraph 2), periodically or otherwise. Any such withdrawal order or authorization that may be honored as a withdrawal request for payment to a third party may, if so authorized by the third party, be honored as a transfer to an account of such third party. Any form for such withdrawal order or authorization shall contain language in boldface type of reasonable size to the effect that it is not negotiable or transferable.

(2) Notwithstanding the provisions of subparagraph (1) of this paragraph, withdrawals may be permitted by a member bank to be made automatically or as a normal practice from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in order to cover checks or drafts drawn upon the bank or to maintain a specified balance in or to make periodic transfers to such accounts. In accordance with § 217.1(e)(2) of this Part, a member bank must reserve the right to require the depositor to give notice in writing of an intended withdrawal not less than 30 days before such withdrawal is made. Such notice shall be prominently disclosed and specifically brought to the depositor's attention at the time the automatic transfer service is authorized. A member bank may not require a depositor to authorize such automatic transfer to be made from savings deposits.

(3) A member bank may permit depositors to maintain deposits subject to negotiable orders of withdrawal where authorized by Federal law.

(4) Where a savings deposit is evidenced by a passbook, every withdrawal made upon presentation of the passbook shall be entered in the passbook at the time of withdrawal, and every other withdrawal for such a deposit shall be entered in the passbook as soon as practicable after withdrawal is made.

SECTION 217.6—ADVERTISING OF INTEREST ON DEPOSITS

Every advertisement, announcement, or solicitation relating to the interest paid on deposits in member banks shall be governed by the following rules:

(a) **Annual rate of simple interest.** Interest rates shall be stated in terms of the annual rate of simple interest. In no case shall a rate be advertised that is in excess of the applicable maximum rate for the particular deposit.

(b) **Percentage yields based on one year.** Where a percentage yield achieved by compounding interest during one year is advertised, the annual rate of simple interest shall be stated with equal prominence, together with a reference to the basis of compounding. No member bank shall advertise a percentage yield based on the effect of grace periods permitted in § 217.3(d).

(c) **Percentage yields based on periods in excess of one year.** No advertisement shall include any indication of a total percentage yield, compounded or simple, based on a period in excess of a year, or an average annual percentage yield achieved by compounding during a period in excess of a year.

(d) **Time or amount requirements.** If an advertised rate is payable only on deposits that meet time or amount requirements, such requirements shall be clearly and conspicuously stated. Where the time requirement for an advertised rate is in excess of a year, the required number of years for the rate to apply shall be stated with equal prominence, together with an indication of any lower rate or rates that will apply if the deposit is withdrawn at an earlier maturity.

(e) **Penalty for early withdrawals.** Any advertisement, announcement, or solicitation relating to interest paid by a member bank on time deposits shall include clear and conspicuous notice that Federal law and regulation prohibit the bank from allowing payment of a time deposit before maturity unless substantial interest is forfeited. Such notice may state that,

> "Federal law and regulation prohibit the payment of a time deposit prior to maturity

unless three months of the interest thereon is forfeited and interest on the amount withdrawn is reduced to the passbook rate."

With respect to any advertisement, announcement, or solicitation made by television or radio, the required notice of penalty may be stated in a form such as "Substantial interest penalty is required for early withdrawal." Any advertisement, announcement or solicitation relating to interest paid by a member bank on negotiable Investment Certificates issued pursuant to subpart 3 of § 217.7(b) shall include clear and conspicuous notice that Federal law and regulation prohibit the payment of such certificate prior to maturity.

(f) **Profit.** The term "profit" shall not be used in referring to interest paid on deposits.

(g) **Accuracy of advertising.** No member bank shall make any advertisement, announcement, or solicitation relating to the interest paid on deposits that is inaccurate or misleading or that misrepresents its deposit contracts.

(h) **Solicitation of deposits for banks.** Any person or organization that solicits deposits for a member bank shall be bound by the rules contained in this section with respect to any advertisement, announcement, or solicitation relating to such deposits. No such person or organization shall advertise a percentage yield on any deposit it solicits for a member bank that is not authorized to be paid and advertised by such bank.

(i) **Negotiable orders of withdrawal.** In addition to compliance with the other paragraphs of this section, member banks offering accounts subject to negotiable orders of withdrawal, to the extent practicable, shall limit every advertisement, announcement or solicitation made in any newspaper, magazine, radio, television or other media to such facilities directed toward residents of the States in which Federal law authorizes the issuance of such accounts. All other advertisement, announcements and solicitations of such accounts, including direct mailing, circulars, and notices, whether written or oral, to the extent practicable, shall be directed only to persons residing or employed in the States in which Federal law authorizes the issuance of accounts subject to negotiable orders of withdrawal and to persons who are customers of member banks in those States on the effective date of this amendment.

(SECTION 217.7—MAXIMUM RATES OF INTEREST PAYABLE BY MEMBER BANKS ON TIME AND SAVINGS DEPOSITS, is printed separately.)

STATUTORY APPENDIX

Section 19 of the Federal Reserve Act provides in part as follows:

(a) The Board is authorized for the purposes of this section to define the terms used in this section, to determine what shall be deemed a payment of interest, to determine what types of obligations, whether issued directly by a member bank or indirectly by an affiliate of a member bank or by other means, and, regardless of the use of the proceeds, shall be deemed a deposit, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this section and to prevent evasions thereof.

[U.S.C., title 12, sec. 461]

***

(i) No member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand: *Provided,* That nothing herein contained shall be construed as prohibiting the payment of interest in accordance with the terms of any certificate of deposit or other contract entered into in good faith which is in force on the date on which the bank becomes subject to the provisions of this paragraph; but no such certificate of deposit or other contract shall be renewed or extended unless it shall be modified to conform to this paragraph, and every member bank shall take such action as may be necessary to conform to this paragraph as soon as possible consistently with its contractual obligations: *Provided further,* That this paragraph shall not apply to any deposit of such bank which is payable only at an office thereof located outside of the States of the United States and the District of Columbia: *Provided further,* That until the expiration of two years after the date of enactment of the Banking Act of 1935 this paragraph shall not apply (1) to any deposit made by a savings bank as defined in section 12B of this Act, as amended, or by a mutual savings bank, or (2) to any deposit of public funds made by or on behalf of any State, county, school district, or other subdivision or municipality, or to any deposit of trust funds if the payment of interest with respect to such deposit of public funds or of trust funds is required by State law. So much of existing law as requires the payment of interest with respect to any funds deposited by the United States, by any Territory, District, or possession thereof (including the Philippine Islands), or by any public instrumentality, agency, or officer of the foregoing, as is inconsistent with the provisions of this section as amended, is hereby repealed.

[U.S.C., title 12, sec. 371a.]

(j) The Board may from time to time, after consulting with the Board of Directors of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board, prescribe rules governing the payment and advertisement of interest on deposits, including limitations on the rates of interest which may be paid by member banks on time and savings deposits. The Board may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities or subject to different conditions regarding withdrawal or repayment, according to the nature or location of member banks or their depositors, or according to such other reasonable bases as the Board may deem desirable in the public interest. No member bank shall pay any time deposit before its maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the said Board, or waive any requirement of notice before payment of any savings deposits except as to all savings deposits having the same requirements: *Provided,* That the provisions of this paragraph shall not apply to any deposit which is payable only at an office of a member bank located outside of the States of the United States and the District of Columbia. During the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this paragraph shall not apply to the rate of interest which may be paid by member banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

[U.S.C., title 12, sec. 371b. The first two sentences of this paragraph are, in part, temporary. Unless section 7 of the Act of September 21, 1966 (as amended by the Act of December 31, 1975) is modified, on December 15, 1978, such sentences will read as follows: "The Board of Governors of the Federal Reserve System shall from time to time prescribe rules governing the payment and advertisement of interest on deposits, including limitations on the rate of interest which may be paid by member banks on time and savings deposits, and shall prescribe different rates for such payment on time and savings deposits having different maturities, or subject to different conditions respecting withdrawal or repayment, or subject to different conditions by reason of different locations, or according to the varying discount rates of member banks in the several Federal Reserve districts."]

BOARD OF GOVERNORS

of the

FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

REGULATION Y

(12 CFR 225)

As amended effective April 5, 1978

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve district in which the inquiry arises. Forms for the preparation of registration statements, applications, requests, and reports may be obtained from any Federal Reserve Bank.

CONTENTS

REGULATION Y

(12 CFR 225)

As amended effective April 5, 1978

BANK HOLDING COMPANIES*

SECTION 225.1—DEFINITIONS

(a) **Terms used in the Act.** As used in this Part, the terms "bank holding company", "company", "bank", "subsidiary", and "Board" have the same meanings as those given such terms in the Act.

(b) **Federal Reserve Bank.** The term "Federal Reserve Bank" as used in this Part with respect to action by, on behalf of, or directed to be taken by a bank holding company or other organization shall mean either the Federal Reserve Bank of the Federal Reserve district in which the operations of the bank holding company or other organization are principally conducted, as measured by total deposits held or controlled by it on the date on which it became, or is to become, a bank holding company, or such Reserve Bank as the Board may designate.

SECTION 225.2—DETERMINATIONS REGARDING CONTROL

(a) **Conclusive presumptions of control.** Conclusive presumptions that a company controls a bank or other company are established by section 2(a)(2)(A) and (B) and by section 2(g)(1) and (2) of the Act. In addition, the Board has determined that, whenever the transferability of 25 per cent or more of any class of voting securities of a company is conditioned in any manner, whether pursuant to an agreement, by-law, article of incorporation, or otherwise, upon the transfer of 25 per cent or more of any class of voting securities of another company, the holders of the securities affected by the condition (that is, those who hold both the securities whose tranferability is so conditioned and the securities whose transfer can be required to satisfy the condition) constitute, in their capacity as such, a "company" for the purposes of the Act unless one of the issuers of such securities is a subsidiary of the other and is so identified in an order of the Board or in a registration statement or report accepted by the Board under the Act.

(b) **Rebuttable presumptions of control.** A rebuttable presumption that a company controls a bank or other company is established by section 2(g)(3) of the Act. In addition, the Board has established, for use in proceedings instituted in accordance with the procedures of paragraph (c) below, the following rebuttable presumptions:

(1) A company that owns, controls, or has power to vote more than 5 per cent of any class of voting securities of a bank or other company (except where such securities are held in a fiduciary capacity and the company does not have sole discretionary authority to exercise the voting

* This text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 225, cited as 12 CFR 225. The "Act" referred to herein is the Bank Holding Company Act of 1956. The words "this Part," as used herein, mean Regulation Y. (Prior to December 1, 1971, this Part was designated as Part 222.)

rights) presumably controls that bank or other company if (i) one or more of the company's directors, trustees, or partners, or officers or employees with policymaking functions serves in any of these capacities with the bank or other company, and (ii) no other person owns, controls, or has power to vote as much as 5 per cent of any class of voting securities of that bank or other company.

(2) A company that owns, controls, or has power to vote more than 5 per cent of any class of voting securities of a bank or other company (except where such securities are held in a fiduciary capacity and the company does not have sole discretionary authority to exercise the voting rights) presumably controls that bank or other company if additional voting securities are owned, controlled, or held with power to vote by individuals (or members of their immediate families as defined in § 206.2(k) of this chapter (Regulation F)) who are directors, officers, trustees, or partners of the company (or own, directly or indirectly, 25 per cent or more of any class of voting securities of the company) and, together with the company's securities, aggregate 25 per cent or more of any class of voting securities of that bank or other company.

(3) A company that enters into any agreement or understanding with a bank or other company (other than an investment advisory agreement), such as a management contract, pursuant to which the company or any of its subsidiaries exercises significant influence with respect to the general management or overall operations of the bank or other company presumably controls such bank or other company.

(4) A company that enters into any agreement or understanding under which the rights of a holder of voting securities of a bank or other company are restricted in any manner presumably controls the shares involved, unless the agreement or understanding (i) is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares, or (ii) is incident to a *bona fide* loan transaction, or (iii) relates to restrictions on transferability and continues only for such time as may reasonably be necessary to obtain approval from a Federal bank supervisory authority with respect to acquisition by the company of such securities.

(5) A company that owns directly or indirectly securities that are immediately convertible at the option of the holder or owner thereof into voting securities presumably owns or controls the voting securities.

(c) **Procedures for determining control.** (1) In any case in which a presumption established by paragraph (b) of this section applies, or in any other case where it appears to the Board that a company exercises a controlling influence over the management or policies of a bank or other company, and the company has not complied with the provisions of the Act, the Board may inform the company that a preliminary determination of control has been made on the basis of the facts summarized in the communication. Such company shall within 30 days (or such longer period of time as may be permitted by the Board) (i) indicate to the Board its willingness to terminate the control relationship and to furnish promptly its specific plan to do so; or (ii) state that it will promptly seek Board approval to retain the control relationship, or, if the control relationship has existed continuously since prior to December 31, 1970 (in a manner not covered by section 2(a)(2)(A) or (B)), that it will register as a bank holding company or, if already a holding company report the bank or other company as a subsidiary, or otherwise comply with the applicable provisions of the Act; or (iii) set forth such facts and circumstances as may support its contention that there is not a control relationship.

(2) A company may request a hearing to contest the Board's preliminary determination of control. In the event a hearing is held, any applicable presumptions established by paragraph (b) of this section shall be considered in the usual manner in accordance with the rules of evidence, and the Board will by order, on the basis of the record of the hearing, decide the issues involved and direct such action as may be necessary or appropriate in the circumstances. In the event no hearing is held, but the preliminary determination of control is contested, the Board will decide the matter on the basis of the evidence available to it, relying on the presumptions established in paragraph (b) of this section, and will by order direct such action as may be necessary or appropriate in the circumstances.

SECTION 225.3—ACQUISITION OR RETENTION OF BANK SHARES OR ASSETS

(a) **Submission of applications.** An application for approval by the Board of any transaction requiring approval under section 3(a) of the Act shall be filed with the Federal Reserve Bank. A

separate application shall be filed with respect to each bank the voting shares or assets of which are sought to be acquired by an existing bank holding company or nonbanking subsidiary thereof.

(b) **Action on applications.** Applications under this section are processed in accordance with the procedures specified in the Act and in § 262.3 of the Board's Rules of Procedure (Part 262 of this chapter). Any application for the Board's approval of the formation of a company that controls only one bank shall be deemed to be approved 45 days after the company has been informed by its Reserve Bank that said application has been accepted, unless the company is notified to the contrary within that time or is granted approval at an earlier date.

(c) **Applications to retain shares acquired in a fiduciary capacity.** Applications under this subsection are processed on the basis of a letter of notification without compliance with section 262.3(h) of the Board's Rules of Procedure. Any application for the Board's approval to retain shares of bank stock acquired in a fiduciary capacity (with sole voting rights), which is accompanied by an unconditional undertaking by the Applicant to dispose of such shares or its sole discretionary voting rights with respect to such shares within two years from the date of such acquisition, shall be deemed to be approved 45 days after the Applicant has been informed by the Reserve Bank that said application has been accepted, unless the Applicant is notified to the contrary within that time or is granted approval at an earlier date.

SECTION 225.4—NONBANKING ACTIVITIES

(a) **Activities closely related to banking or managing or controlling banks.** In accordance with the procedures set forth in paragraphs (b) and (c) of this section, any bank holding company may engage, or retain or acquire an interest in a company that engages, solely in one or more of the activities specified below, including such incidental activities as are necessary to carry on the activities so specified. Any bank holding company that is of the opinion that other activities in the circumstances surrounding a particular case are closely related to banking or managing or controlling banks may file an application in accordance with the procedures set forth in paragraph (b)(2) of this section. As to such an application, the Board will publish in the Federal Register a notice of opportunity for hearing only if it believes that there is a reasonable basis for the holding company's opinion. The following activities have been determined by the Board to be so closely related to banking or managing or controlling banks as to be a proper incident thereto:

(1) making or acquiring, for its own account or for the account of others, loans and other extensions of credit (including issuing letters of credit and accepting drafts), such as would be made, for example, by a mortgage, finance, credit card, or factoring company;

(2) operating as an individual bank, Morris Plan bank, or industrial loan company, in the manner authorized by State law so long as the institution does not both accept demand deposits and make commercial loans;

(3) servicing loans and other extensions of credit for any person;

(4) performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company (including activities of a fiduciary, agency, or custodian nature), in the manner authorized by Federal or State law, so long as the institution does not make loans or investments or accept deposits other than (i) deposits that are generated from trust funds not currently invested and are properly secured to the extent required by law, or (ii) deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property, or for such owner or investor as agent or custodian of funds held for investment or escrow agent, or for an issuer of, or broker or dealer in securities, in a capacity such as paying agent, dividend disbursing agent, or securities clearing agent, and not employed by or for the account of the customer in the manner of a general purpose checking account or bearing interest, or (iii) making of call loans to securities dealers or purchase of money market instruments such as certificates of deposit, commerical paper, government or municipal securities, and bankers acceptances (such authorized loans and investments, however, may not be used as a method of channeling funds to nonbanking affiliates of the trust company); . . .

(5) acting as investment or financial adviser to the extent of (i) serving as the advisory company for a mortgage or a real estate investment trust;

(ii) serving as investment adviser, as defined in section 2(a) (20) of the Investment Company Act of 1940, to an investment company registered under that Act; (iii) providing portfolio investment advice[1] to any other person; (iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies;[2] and (v) providing financial advice to State and local governments, such as with respect to the issuance of their securities;

(6)(a) Leasing personal property or acting as agent, broker or adviser in leasing such property provided:

(i) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(iii) the lease is on a nonoperating basis;[3]

(iv) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions[4]) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,[5] from: (1) rentals; (2) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect); (3) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 per cent of the acquisition cost of the property to the lessor; and (4) in the case of a lease of not more than 7 years in duration, such additional amount, which shall not exceed 60 per cent of the acquisition cost of the property, as may be provided by an unconditional guarantee by a lessee, independent third party or manufacturer, which has been determined by the lessor to have the financial resources to meet such obligation, that will assure the lessor of recovery of its investment and cost of financing;

(v) the maximum lease term during which the lessor must recover the lessor's full investment in the property plus the estimated total cost of financing the property shall be 40 years; and

(vi) at the expiration of the lease (including any renewals or extensions with the same lessee),

[1] The term "portfolio investment" as used herein is intended to refer generally to the investment of funds in a "security" as defined in section 2(1) of the Securities Act of 1933 (15 U.S.C. § 77a) or in real property interests, except where the real property is to be used in the trade or business of the person being advised. In furnishing portfolio investment advice, bank holding companies and their subsidiaries shall observe the standards of care and conduct applicable to fiduciaries.

[2] This is to be contrasted with "management consulting" which the Board views as including, but not limited to, the provision of analysis or advice as to a firm's (i) purchasing operations, such as inventory control, sources of supply, and cost minimization subject to constraints; (ii) production operations, such as quality control, work measurement, product methods, scheduling shifts, time and motion studies, and safety standards; (iii) marketing operations, such as market testing, advertising programs, market development, packaging, and brand development; (iv) planning operations, such as demand and cost projections, plant location, program planning, corporate acquisitions and mergers and determination of long-term and short-term goals; (v) personnel operations, such as recruitment, training, incentive programs, employee compensation, and management-personnel relations; (vi) internal operations, such as taxes, corporate organization, budgeting systems, budget control, data processing systems evaluation, and efficiency evaluation; or (vii) research operations, such as product development, basic research, and product design and innovation. The Board has determined that "management consulting" is not an activity that is so closely related to banking or managing or controlling banks as to the proper incident thereto.

[3] For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly, provide for the servicing, repair or maintenance of the leased vehicle during the lease term; purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; provide for the loan of an automobile during servicing of the leased vehicle; purchase insurance for the lessee; or provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

[4] The Board understands that some Federal, State and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized under § 225.4(a) from entering into a lease with such governmental entities if the company reasonably anticipates that such governmental entities will renew the lease annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further, a company authorized under § 225.4(a)(6) may also engage in so-called 'bridge" lease financing of personal property, but not real property, where the lease is short term pending completion of long term financing, by the same or another lender.

[5] The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee, if a factor in the financing, and prevailing rates in the money and capital markets.

all interest in the property shall be either liquidated or re-leased on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease,[6] however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(6)(b) Leasing real property or acting as agent, broker or adviser in leasing such property provided:

(i) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(iii) the lease is on a nonoperating basis;

(iv) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions [4]) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,[5] from: (1) rentals; (2) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect); and (3) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 per cent of the acquisition cost of the property to the lessor.

(v) the maximum lease term during which the lessor must recover the lessor's full investment in the property plus the estimated total cost of financing the property shall be 40 years; and

(vi) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or re-leased on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease,[6] however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(7) making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas;

(8)(i) providing bookkeeping or data processing services for the internal operations of the holding company and its subsidiaries and (ii) storing and processing other banking, financial, or related economic data, such as performing payroll, accounts receivable or payable, or billing services, and

(9) acting as insurance agent or broker in offices at which the holding company or its subsidiaries are otherwise engaged in business (or in an office adjacent thereto) with respect to the following types of insurance:

(i) Any insurance for the holding company and its subsidiaries;

(ii) Any insurance that (*a*) is directly related to an extension of credit by a bank or a bank-related firm of the kind described in this regulation, or (*b*) is directly related to the provision of other financial services by a bank or such a bank-related firm or (*c*) is otherwise sold as a matter of convenience to the purchaser, so long as the premium income from sales within this subdivision (ii) (*c*) does not constitute a significant portion of the aggregate insurance premium income of the holding company from insurance sold pursuant to this subdivision (ii);

(iii) Any insurance sold in a community that (*a*) has a population not exceeding 5,000, or (*b*) the holding company demonstrates has inadequate insurance agency facilities.

(10) acting as underwriter for credit life insurance and credit accident and health insurance which is directly related to extensions of credit by the bank holding company system.[7]

(11) providing courier services (i) for the internal operations of the holding company and its subsidiaries; (ii) for checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) as are exchanged among banks and banking insti-

See page 6 for footnotes 4 and 5.

[6] In the event of a default on a lease agreement prior to the expiration of the lease term, the lessor shall either release such property, subject to all the conditions of this subsection 6(b), or liquidate such property as soon as practicable but in no event later than two years from the date of default on a lease agreement.

[7] To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service.

tutions; (iii) for audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[8]

(12) providing management consulting advice [9] to nonaffiliated banks *Provided* that, (i) neither the bank holding company nor any of its subsidiaries own or control, directly or indirectly, any equity securities in the client bank; (ii) no officer, director, or employee of the bank holding company or any of its subsidiaries serves as an officer, director or employee of the client bank except where such interlocking relationships are or would be permitted by section 212.3(g) of Regulation L; (iii) the advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client bank at any subsidiary bank of the bank holding company; and (iv) disclosure is made to each potential client bank of (a) the names of all banks which are affiliates of the consulting company, and (b) the names of all existing client banks located in the same market area(s) as client bank.[10]

(b)(1) **De novo entry.** A bank holding company may engage *de novo* (or continue to engage in an activity earlier commenced *de novo*) directly or indirectly, solely in activities described in paragraph (a) of this section, 45 days after the company has furnished its Reserve Bank with a copy of a notice of the proposal (in substantially the same form as F.R. Y-4A) published within the preceding 30 days in a newspaper of general circulation in the communities to be served, unless the company is notified to the contrary within that time or unless it is permitted to consummate the transaction at an earlier date on the basis of exigent circumstances of a particular case. If adverse comments of a substantive nature are received by the Reserve Bank within 30 days after the company has so published its proposal,[11] or if it otherwise appears appropriate in a particular case, the Reserve Bank may inform the company that (i) the proposal shall not be consummated until specifically authorized by the Reserve Bank or by the Board or (ii) the proposal should be processed in accordance with the procedures of subparagraph (2) of this paragraph.

(2) **Acquisition of going concern.** A bank holding company may apply to the Board to acquire or retain the assets of or shares in a company engaged solely in activities described in paragraph (a) of this section by filing an application with its Reserve Bank (Form F.R. Y-4). Every such application shall be accompanied by a copy of a notice of the proposal (in substantially the same form as F.R. Y-4B) published within the preceding 30 days in a newspaper of general circulation in the communities to be served. The Board will publish in the Federal Register notice of any such application and will give interested persons an opportunity to express their views (including, where appropriate, by means of a hearing) on the question whether performance of the activity proposed by the holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(3) **Simplified procedures.*** (i) The procedures of subparagraphs (1) and (2) of this paragraph shall not apply with respect to a holding company or a subsidiary thereof engaging in the following:

(*a*) making, acquiring, or servicing loans or other extensions of credit for personal, family, or household purposes if the commencement or expansion of such activity does not involve an acquisition of assets of $10 million or more (or the acquisition of shares of a company having such

[8] Applications to engage *de novo* in providing courier services should be filed in accordance with the procedures of § 225.4(b)(2) rather than § 225.4(b)(1). See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for holding company entry pursuant to § 4(c)(8).

[9] In performing this activity bank holding companies are not authorized to perform tasks or operations or provide services to client banks either on a daily or continuing basis, except as shall be necessary to instruct the client bank on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.131).

[10] Applicants to engage *de novo* in providing management consulting advice to nonaffiliated banks should be filed in accordance with the procedures of § 225.4(b)(2) rather than § 225.4(b)(1) of Regulation Y.

[11] If a Reserve Bank decides that adverse comments are not of a substantive nature, the person submitting the comments may request review by the Board of that decision in accordance with the provisions of § 265.3 of the Board's Rules Regarding Delegation of Authority (12 CFR 265.3) by filing a petition for review with the Secretary of the Board.

* By order dated December 21, 1971, the Board suspended the operation of § 225.4(b)(3) of Regulation Y until further notice (36 Federal Register 25048, December 28, 1971).

assets) except that (*1*) no holding company may acquire more than $50 million in assets in any calendar year under the provisions of this clause, (*2*) within 30 days after the consummation of such an acquisition, the holding company informs its Reserve Bank of the acquisition (in substantially the same form as F.R. Y-4B), and (*3*) whenever necessary to effectuate the purposes of the Act, the Board may require suspension or discontinuation of any action taken, or divestiture of any acquisition made, on authority of this provision and may withdraw such authority with respect to any particular holding company;

(*b*) engaging in activities described in § 225.4(a) that are shifted from a bank in the holding company system and were engaged in by the bank either *de novo* or as a result of a merger transaction described in and approved by a Federal supervisory agency pursuant to section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), 45 days after the holding company has informed its Reserve Bank of its proposal to shift such activity (in substantially the same form as F.R. Y-4B), unless the company is notfiied to the contrary within that time or is permitted to consummate the transaction at an earlier date.

(ii) The procedures of subparagraph (1) of this paragraph shall not apply with respect to a holding company or a subsidiary thereof engaging *de novo* as insurance agent or broker with respect to the types of insurance listed in subdivisions (i), (ii), and (iii)(*a*) of paragraph (a)(9) of this section, 45 days after the holding company has informed its Reserve Bank of its proposal to engage in such activity (in substantially the same form as F.R. Y-4B), unless the company is notified to the contrary within that time or is permitted to consummate the transaction at an earlier date.

(c) **Tie-ins, alterations, relocations, consolidations.** Except as otherwise provided in an order in a particular case, the following conditions shall apply with respect to every acquisition consummated or activity engaged in on the authority of section 4(c)(8) of the Act: (1) the provision of any credit, property or services involved shall not be subject to any condition which, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970; (2) the activities involved shall not be altered in any significant respect from those considered by the Board in making the determination, nor provided at any location other than those described in the notice published with respect to such determination, except upon compliance with the procedures of paragraph (b)(1) of this section; and (3) no merger, or acquisition of assets other than in the ordinary course of business, to which the acquired company is a party shall be consummated without prior Board approval, if thereafter the bank holding company will continue to own, directly or indirectly, more than five per cent of the voting shares of such company or its successor.

(d) **Certain acquisitions by companies that became bank holding companies on December 31, 1970, as a result of the 1970 amendments.** Except as provided in this paragraph, no bank holding company may acquire, directly or indirectly, any shares or commence to engage in any activities on the basis of section 4(c)(12) of the Act. A company may file with the Board an irrevocable declaration, in the form approved by the Board,[12] that it will cease to be a bank holding company by January 1, 1981, unless it is granted an exemption under section 4(d) of the Act. A company that has filed such a declaration may (1) commence new activities *de novo,* either directly or through a subsidiary, without further action under this paragraph, until such time as the Board notifies the company to the contrary, and (2) make an acquisition of a going concern 45 days after the company has informed its Reserve Bank of the proposed acquisition, unless the company is notified to the contrary within that time or unless it is permitted to make the acquisition at an earlier date, based on exigent circumstances of a particular case. If the company has not filed such a declaration, no acquisition may be made, or activity commenced, on the basis of section 4(c)(12) except with prior approval of the Board. Normally only requests with respect to acquisitions or expansion of activities that the company demonstrates to the satisfaction of the Board are necessary to enable it more efficiently to market its assets subject to divestiture will be approved. This paragraph does not apply to acquisitions made pursuant to a binding commitment entered into before March 23, 1971.

[12] Although the form of declaration is in terms of a company divesting itself of whatever interest it has in the bank, a company is regarded by the Board as complying with this condition if it furnishes the Board with convincing evidence that it does not exercise a controlling influence over the management or policies of the bank despite retention of some interest in the bank.

(e) **Activities of companies in which national banks may invest.** No bank holding company or subsidiary thereof that is not a bank or subsidiary of a bank may, after June 30, 1971, acquire shares on the basis of section 4(c)(5) of the Act unless such shares are of the kinds and amounts explicitly eligible by Federal statute for investment by a national bank. A national bank or a subsidiary thereof may acquire or retain shares on the basis of section 4(c)(5) in accordance with the rules and regulations of the Comptroller of the Currency. So far as Federal law is concerned, a State-chartered bank or a subsidiary thereof may (1) acquire or retain shares on the basis of section (4)(c)(5) if such shares are of the kinds and amounts explicitly eligible by Federal statute for investment by a national bank and (2) acquire or retain all (but, except for directors' qualifying shares, not less than all) of the shares of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(f) **Foreign activities of domestic holding companies.** (1) Any bank holding company may, with the consent of the Board, own or control voting shares of any company in which a company organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631) may invest other than a company that accepts deposits or similar credit balances in the United States.

(2) The procedures governing the Board's consent shall be the same as those set forth in § 211.8 of this chapter (Regulation K). In addition, the Board grants its general consent for any bank holding company to acquire from any of its subsidiaries any shares the subsidiary holds with the consent of the Board pursuant to Parts 211 or 213 of this chapter (Regulations K and M). The Board may at any time, upon notice, suspend the general consent procedures with respect to any bank holding company or with respect to the acquisition of shares of companies engaged in particular kinds of activities.

(3) It shall be a condition to the Board's specific consent to the continued holding of voting shares of any subsidiary of a bank holding company which are acquired or held on the basis of an exemption under section 4(c)(13) of the Act that the subsidiary may take the following actions only with prior Board approval: (a) establish branch offices or agencies in the United States or to engage in receiving deposits in any foreign country (other than a foreign country in which it already has such an activity with the Board's approval) or (b) issue in the United States any debentures, bonds, promissory notes, or similar obligations, other than instruments or obligations due within one year.

(4) A bank holding company shall inform the Board, through its Federal Reserve Bank within 30 days after the close of each semiannual period, of all shares acquired or disposed of during that period that are or were held under the authority of this paragraph. With respect to any acquisition, such information shall (unless previously furnished) include brief descriptions of the business of the companies whose shares were acquired.

(g) **Foreign bank holding companies.** (1) As used in this paragraph: (i) "revenues" means gross income and "consolidated" means consolidated in accordance with generally accepted accounting principles in the United States consistently applied; (ii) "foreign country" means any foreign nation or colony, dependency, or possession thereof; and (iii) "foreign bank holding company" means a bank holding company, organized under the laws of a foreign country, more than half of whose consolidated assets are located, or consolidated revenues derived, outside the United States.

(2) A foreign bank holding company may:

(i) engage in direct activities of any kind outside the United States;

(ii) engage in direct activities in the United States that are incidental to its activities outside the United States;

(iii) own or control voting shares of any company that is not engaged, directly or indirectly, in any activities in the United States except as shall be incidental to the international or foreign business of such company;

(iv) with the consent of the Board, own or control voting shares of any company principally engaged in the United States in financing or facilitating transactions in international or foreign commerce;

(v) own or control voting shares of any company, organized under the laws of a foreign country, that is engaged, directly or indirectly, in any activities in the United States if (*a*) such company is not a subsidiary of such bank holding company, (*b*) more than half of such company's consolidated assets and revenues are located and

derived outside the United States, and (*c*) such company does not engage, directly or indirectly, in the business of underwriting, selling, or distributing securities in the United States; and

(vi) own or control voting shares of any company in fiduciary capacity under circumstances which would entitle such shareholding to an exemption under section 4(c)(4) of the Act if the shares were held or acquired by the bank.

Nothing in this subparagraph shall authorize a foreign bank holding company to own or control more than 5 per cent of any class of voting shares of any other bank holding company or company accepting deposits or similar credit balances in the United States, except in a fiduciary capacity or with prior approval of the Board.

(3) A foreign bank holding company that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(9) of the Act may apply to the Board for such determination by submitting to the Reserve Bank of the district in which its banking operations in the United States are principally conducted a letter setting forth the basis for that opinion.

(4) A foreign bank holding company shall inform the Board, through such Reserve Bank within 30 days after the close of each quarter, of all shares of companies engaged, directly or indirectly, in activities in the United States that were acquired during such quarter under the authority of this paragraph. Such information shall (unless previously furnished) include a brief description of the nature and scope of each such company's business in the United States. Information required need be given only insofar as it is known or reasonably available to a foreign bank holding company, if any required information is unknown and not reasonably available to the bank holding company, either because the obtaining thereof would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of a company that is not controlled by the bank holding company, the information need not be provided, but the bank holding company shall (i) give such information on the subject as it possesses or can acquire without unreasonable effort or expense together with the sources thereof, and (ii) include a statement either showing that unreasonable effort or expense would be involved or indicating that the company whose shares were acquired is not controlled by the bank holding company and stating the result of a request made to such company for information. No such request need be made, however, to any foreign government, or an agency or instrumentality thereof, if, in the opinion of the bank holding company, such request would be harmful to existing relationships.

(5) If, in the Board's judgment, a company is a substantial competitor in any line of commerce in the United States, an exemption under this paragraph with respect to ownership or control of such company's voting shares may not be predicated on the unavailability of information to establish whether or not such company's activities in the United States are consistent with such an exemption. In the absence of available information, it will be presumed that such a company's activities do not justify an exemption under this paragraph for the holding of its shares by a foreign bank holding company. A company will be deemed to be a substantial competitor in any line of commerce in the United States if its products or services are nationally advertised or distributed in this country or if they are widely advertised or distributed in a regional market in which a banking subsidiary, branch or agency of the foreign bank holding company is located. If unable to obtain sufficient information to establish whether or not an exemption is available, a foreign bank holding company should seek prior approval of the Board before investing in any company that might be a substantial competitor in any line of commerce in the United States.

SECTION 225.5—ADMINISTRATION

(a) **Effective date of registration.** The date of registration of a bank holding company shall be the date on which its registration statement is filed with the Federal Reserve Bank.

(b) **Reports and examinations.** Each bank holding company shall furnish to the Board in a form prescribed by the Board a report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year thereafter until it ceases to be a bank holding company. Each such annual report shall be filed with the Federal Reserve Bank. Each bank holding company shall furnish to the Board additional information at such times as the Board may require. The Board may examine any bank holding company or any of its subsidiaries and the cost of any such examination shall be assessed against and paid by such bank holding

company. As far as possible the Board will use reports of examinations made by the Comptroller of the Currency; the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority.

(c) **Registration of certain bank holding companies and their nonbank subsidiaries as transfer agents.** (1) On or after December 1, 1975, no bank holding company or any of its nonbank subsidiaries that are "banks" as defined in section 3(a)(6) of the Securities Exchange Act of 1934 ("Act"), shall act as transfer agent, as defined in section 3(a)(25) of that Act, with respect to any security registered under section 12 of the Act or that would be required to be registered under section 12 of the Act, except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section, unless it shall have filed a registration statement with the Board in conformity with the requirements of Form TA-1, which registration statement shall have become effective as hereinafter provided. Any registration statement filed by such bank holding company or its nonbank subsidiary shall become effective on the thirtieth day after filing with the Board, unless the Board takes affirmative action to accelerate, deny or postpone such registration in accordance with the provisions of section 17A(c) of the Act. Such filings with the Board will constitute filings with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act.

(2) If the information contained in Items 1-6 of Form TA-1 becomes inaccurate, misleading or incomplete for any reason, the bank holding company or its nonbank subsidiary shall, within twenty-one calendar days thereafter file an amendment to Form TA-1 correcting the inaccurate, misleading or incomplete information. Within thirty calendar days following the close of any calendar year (beginning with the period from the date as of which the registration statement is prepared to December 31, 1976) during which the information required by Item 7 of Form TA-1 becomes inaccurate, misleading or incomplete, the bank holding company or its nonbank subsidiary shall file an amendment to Form TA-1, correcting the inaccurate, misleading or incomplete information.

(3) Each registration statement on Form TA-1 or amendment thereto shall constitute a "report" or "application" within the meaning of sections 17, 17A(c) and 32(a) of the Act.

(4) Every bank holding company and nonbank subsidiary of a bank holding company that is registered with the Board as a transfer agent is exempted until April 3, 1978, from that part of the provision of Section 225.5(c)(2) that states that "[w]ithin thirty calendar days following the close of any calendar year * * * during which the information required by Item 7 of Form TA-1 becomes inaccurate, misleading or incomplete, the bank holding company or its nonbank subsidiary shall file an amendment to Form TA-1 correcting the inaccurate, misleading or incomplete information".

(d) **Applications for stays of disciplinary sanctions or summary suspensions by a registered clearing agency.** If a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency, imposes any final disciplinary sanction pursuant to Section 17A(b)(3)(G) of the Act, or summarily suspends or limits or prohibits access pursuant to Section 17A(b)(5)(C) of the Act, any participant aggrieved thereby for which the Board is the appropriate regulatory agency may file with the Board, by telegram or otherwise, a request for a stay of imposition of such action. Such request shall be in writing and shall include a statement as to why such stay should be granted.

(e) **Applications for review of final disciplinary sanctions, denials of participation or prohibitions or limitations of access to services imposed by registered clearing agencies.** (1) Scope. Proceedings on an application to the Board under Section 19(d)(2) of the Act by a person that is subject to the Board's jurisdiction for review of any action by a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency shall be governed by this paragraph.

(2) Procedure. (i) An application for review pursuant to Section 19(d)(2) of the Act shall be filed with the Board within 30 days after notice is filed by the registered clearing agency pursuant to Section 19(d)(1) of the Act and received by the aggrieved person applying for review, or within such longer period as the Board may determine. The Secretary of the Board shall serve a copy of the application on the registered clearing agency, which shall, within ten days after receipt of the application, certify and file with the Board one copy of the record upon which the action complained was taken, together with three copies of an index to such record. The

Secretary shall serve upon the parties copies of such index and any papers subsequently filed.

(ii) Within 20 days after receipt of a copy of the index, the applicant shall file a brief or other statement in support of his application which shall state the specific grounds on which the application is based, the particular findings of the registered clearing agency to which objection is taken, and the relief sought. Any application not perfected by such timely brief or statement may be dismissed as abandoned.

(iii) Within 20 days after receipt of the applicant's brief or statement the registered clearing agency may file an answer thereto, and within 10 days of receipt of any such answer the applicant may file a reply. Any such papers not filed within the time provided by items (A), (B), or (C) will not be received except upon special permission of the Board.

(iv) On its own motion, the Board may direct that the record under review be supplemented with such additional evidence as it may deem relevant. Nevertheless, the registered clearing agency and persons who may be aggrieved by such clearing agency's action shall not be entitled to adduce evidence not presented in the proceedings before the registered clearing agency unless it is shown to the satisfaction of the Board that such additional evidence is material and that there were reasonable grounds for failure to present such evidence in the proceedings before the registered clearing agency. Any request for leave to adduce additional evidence shall be filed promptly so as not to delay the disposition of the proceeding.

(v) Oral argument before the Board may be requested by the applicant or the registered clearing agency as follows:

(A) by the applicant with his brief or statement or within 10 days after receipt of the registered clearing agency's answer, or

(B) by the registered clearing agency with its answer.

The Board, in its discretion, may grant or deny any request for oral argument and, where it deems it appropriate to do so, the Board will consider an application on the basis of the papers filed by the parties, without oral argument.

(vi) The Board's Rules of Practice for Formal Hearings shall apply to review proceedings under this rule to the extent that they are not inconsistent with this rule. Attention is directed particularly to Section 263.21 of the Rules of Practice relating to formal requirements as to papers filed.

(f) **Bank holding companies, certain of their subsidiaries, and subsidiaries, departments or divisions of such subsidiaries, which are municipal securities dealers.** (1) For purposes of this paragraph, the terms herein have the meanings given them in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and the rules of the Municipal Securities Rulemaking Board. The term Act shall mean the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(2) A bank holding company, or a subsidiary of a bank holding company which is a bank (other than a national bank or a bank operating under the Code of Law for the District of Columbia or a bank insured by the Federal Deposit Insurance Corporation), or a subsidiary or a department or a division of such a subsidiary, which is a municipal securities dealer shall not permit a person to be associated with it as a municipal securities principal or municipal securities representative unless it has filed with the Board an original and two copies of Form MSD-4, "Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer," completed in accordance with the instructions contained therein, for that person. Form MSD-4 is prescribed by the Board for purposes of paragraph (b) of Municipal Securities Rulemaking Board rule G-7, "Information Concerning Associated Persons."

(3) Whenever a municipal securities dealer receives a statement pursuant to paragraph (c) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons," from a person for whom it has filed a Form MSD-4 with the Board pursuant to subparagraph (2) of this paragraph, such dealer shall, within ten days thereafter, file three copies of that statement with the Board accompanied by an original and two copies of a transmittal letter which includes the name of the dealer and a reference to the material transmitted identifying the person involved and is signed by a municipal securities principal associated with the dealer.

(4) Within thirty days after the termination of the association of a municipal securities principal or municipal securities representative with a municipal securities dealer which has filed a Form MSD-4 with the Board for that person pursuant to subparagraph (2) of this paragraph, such dealer shall file an original and two copies of a notifica-

tion of termination with the Board on Form MSD-5, "Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer," completed in accordance with the instructions contained therein.

(5) A municipal securities dealer which files a Form MSD-4, Form MSD-5, or statement with the Board under this paragraph shall retain a copy of each such Form MSD-4, Form MSD-5 or statement until at least three years after the termination of the employment or other association with such dealer of the municipal securities principal or municipal securities representative to whom the form or statement relates.

(6) The date that the Board receives a Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall be the date of filing. Such a Form MSD-4, Form MSD-5, or statement which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4, Form MSD-5, or statement has been completed in accordance with the applicable requirements or that any information reported therein is true, current, complete, or not misleading. Every Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall constitute a filing with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act (15 U.S.C. section 78q(c)(1) and a "report," "application," or "document" within the meaning of section 32(a) of the Act (15 U.S.C. 78ff(a)).

SECTION 225.6—CORPORATE PRACTICES

(a) **Purchase or redemption by a bank holding company of its own shares.** No bank holding company shall purchase or redeem any shares of any class of its outstanding equity securities without giving at least 45 days prior notice thereof to its Federal Reserve Bank if (i) the gross consideration to be paid for such purchase or redemption is equal to 10 per cent or more of the company's consolidated net worth as of the date of notification, or (ii) the gross consideration to be paid for such purchase or redemption when aggregated with the net consideration paid by the company for all purchases or redemptions of its equity securities during the 12 months preceding the date of notification [13] equals or exceeds 10 per cent of the company's consolidated net worth as of the date of such notice. The 45-day period shall begin to run from the date such notice is received by the Reserve Bank, which shall promptly acknowledge receipt thereof in writing.

Each notice filed hereunder shall furnish the following information:

(1) the title of the security to be purchased or redeemed, and the purposes of the proposed transaction;

(2) the number of shares of that security to be purchased or redeemed; the total number of shares of equity securities outstanding as of the date of the notice, by class; and the number of shares of all other equity securities of the company purchased or redeemed by it over the preceding 12-month period, by class;

(3) the consideration to be paid for the shares to be purchased or redeemed, and the consideration paid for all other shares of the company's equity securities purchased or redeemed by it over the preceding 12-month period, by class;

(4) the date upon which, or that period of time during which, the purchase or redemption will occur;

(5) if known, the names of persons from whom shares are to be purchased or redeemed in such transaction, and, if known, the names of persons from whom shares were purchased or redeemed in the preceding 12 months;

(6) if debt is to be incurred or has been incurred by the company or a subsidiary in connection with the purchase or redemption or any other such purchase or redemption over the preceding 12 months, a description of the terms of the debt, including the identity of the obligee, and the interest rate, maturity and repayment schedule of the debt;

(7) if the transaction is related in any way to a transfer of control of the company, a description of the terms of the transfer, including the identity of the transferee and a copy of any agreements relating to such transfer; and

(8) a current and pro forma consolidated balance sheet of the holding company.

The Reserve Bank may permit a purchase or redemption to be accomplished prior to the expi-

[13] For the purposes of this regulation "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.

ration of the 45-day period if it deterimines that the repurchase or redemption would not constitute an unsafe or unsound practice and would not violate any applicable law, rule, regulation or order, or any condition imposed by, or written agreement with, the Board.

STATUTORY APPENDIX

BANK HOLDING COMPANY ACT OF 1956

Act of May 9, 1956 (70 Stat. 133)

To define bank holding companies, control their future expansion, and require divestment of their nonbanking interests.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bank Holding Company Act of 1956".

DEFINITIONS

Bank holding company

SEC. 2. (a)(1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act.

(2) Any company has control over a bank or over any company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this Act, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).

(5) Notwithstanding any other provision of this subsection.

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to the date of enactment of the Bank Holding Company Act Amendments of 1970 only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after the date of enactment of the Bank Holding Company Act Amendments of 1970.

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of

its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a bank holding company by virtue of its ownership or control of any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of its owners, and deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on the date of enactment of the Bank Holding Company Act Amendments of 1970 and is specifically authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 5136 of the Revised Statutes (12 U.S.C. 24).

(6) For the purposes of this Act, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

Company

(b) "Company" means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State. "Company covered in 1970" means a company which becomes a bank holding company as a result of the enactment of the Bank Holding Company Act Amendments of 1970 and which would have been a bank holding company on June 30, 1968, if those amendments had been enacted on that date.

Bank

(c) "Bank" means any institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which (1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans. Such term does not include any organization operating under section 25 or section 25(a) of the Federal Reserve Act, or any organization which does not do business within the United States except as an incident to its activities outside the United States. "District bank" means any bank organized or operating under the Code of Law for the District of Columbia.

Subsidiary

(d) "Subsidiary", with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly.

to exercise a controlling influence, as determined by the Board, after notice and opportunity for hearing.

Successor

(e) The term "successor" shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The Board may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this Act.

Board

(f) "Board" means the Board of Governors of the Federal Reserve System.

Indirect ownership and control

(g) For the purposes of this Act—

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company;

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company; and

(3) shares transferred after January 1, 1966, 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 that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be 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.

Extraterritorial application

(h) The application of this Act and of section 23A of the Federal Reserve Act (12 U.S.C. 371), as amended, shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States: *Provided, however,* That the prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country that does not do any business within the United States, if such shares are held or acquired by a bank holding company that is principally engaged in the banking business outside the United States.

Thrift institution

(i) The term "thrift institution" means (1) a domestic building and loan or savings and loan association, (2) a cooperative bank without capital stock organized and operated for mutual purposes and without profit, or (3) a mutual savings bank not having capital stock represented by shares.

[U.S.C., title 12, sec. 1841. As amended by Acts of July 1, 1966 (80 Stat. 236) and Dec. 31, 1970 (84 Stat. 1760). The date of enactment of the Bank Holding Company Act Amendments of 1970 referred to in this section is Dec. 31, 1970.]

ACQUISITION OF BANK SHARES OR ASSETS

Transactions requiring approval; exceptions

SEC. 3. (a) It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g), or (ii) in the reg-

ular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the date of enactment of this Act in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; or (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after the date of enactment of the Bank Holding Company Act Amendments of 1970 shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

Hearings on applications

(b) Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has giving written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of this subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispose with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.

Factors to be considered

(c) The Board shall not approve—

(1) any acquisition or merger or consolida-

tion under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or trade, unless it finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Acquisitions in other states

(d) Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on the effective date of this amendment or the date on which such company became a bank holding company, whichever is later, unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication. For the purposes of this section, the State in which the operations of a bank holding company's subsidiaries are principally conducted is that State in which total deposits of all such banking subsidiaries are largest.

Deposit insurance

(e) Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured bank as such term is defined in section 3(h) of the Federal Deposit Insurance Act.

[U.S.C., title 12, sec. 1842. As amended by Acts of July 1, 1966 (80 Stat. 237); Dec. 31, 1970 (84 Stat. 1763) and November 16, 1977 (91 Stat. 1389). The date of enactment of the Bank Holding Company Act Amendments of 1970 referred to in this section is Dec. 31, 1970; the date of the amendment referred to in paragraph (d) is July 1, 1966.]

INTERESTS IN NONBANKING ORGANIZATIONS

Prohibitions

SEC. 4. (a) Except as otherwise provided in this Act, no bank holding company shall—

(1) after the date of enactment of this Act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this Act or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: *Provided*, That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidi-

ary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in an activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this Act, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of $60,000,000 on or after the date of enactment of the Bank Holding Company Act Amendments of 1970 the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed $60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board.

The Board is authorized, upon application by a bank holding company, to extend the two-year period referred to in paragraph (2) above from time to time as to such bank holding company for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years.

Divorcement of shares

(b) After two years from the date of enactment of this Act, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

Exemptions

(c) The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors: and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities; (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use: or (B) conducting a safe deposit business: or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries: or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previous contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period

of two years from time to time as to such holding company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall extend beyond a date five years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraph (2) and (3) of section 2(g);

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which 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 shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In orders and regulations under this subsection, the Board may differentiate between activities commenced *de novo* and activities commenced by the acquisition, in whole or in part, of a going concern;

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this Act) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe; or

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be

substantially at variance with the purposes of this Act and would be in the public interest.

In the event of the failure of the Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

Hardship exemption

(d) To the extent that such action would not be substantially at variance with the purposes of this Act and subject to such conditions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

Retention of shares after repeal of exemption

(e) With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such prohibitions by the subsequent repeal of such exemption, no bank holding company shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a). Any bank holding company subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such bank holding company shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

[U. S. C., title 12, sec. 1843. As amended by Acts of July 1, 1966 (80 Stat. 238); Dec. 31, 1970 (84 Stat. 1763) and November 16, 1977 (91 Stat. 1389).]

ADMINISTRATION

Registration statements

SEC. 5. (a) Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this Act. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information.

Regulations

(b) The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof.

Reports and examinations

(c) The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.

Annual Reports of Board

(d) Before the expiration of two years following the date of enactment of this Act, and each year thereafter in the Board's annual report to the Congress, the Board shall report to the Congress the results of the administration of this Act, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this Act, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e) (1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 9 of this Act, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) In the course of or in connection with an application, examination, investigation or other proceeding under this Act, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum: and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this Act may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it seems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or, to imprisonment for a term of not more than one year or both.

[U. S. C., title 12, sec. 1844.]

[Section 6 was repealed by section 9 of the Act of July 1, 1966 (80 Stat. 240).]

Reservation of Rights to States

States' rights

Sec. 7. The enactment by the Congress of the Bank Holding Company Act of 1956 shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.

[U. S. C., title 12, sec. 1846.]

Penalties

Criminal penalties

Sec. 8 (a). Any company which willfully violates any provision of this Act, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than $1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Act shall upon conviction be fined not more than $10,000 or imprisoned not more than one year, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

(b) (1) Any company which violates or any individual who participates in a violation of any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in section 9. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.

[U. S. C., title 12, sec. 1847.]

Judicial Review

Judicial review

Sec. 9. Any party aggrieved by an order of the Board under this Act may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business, or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

[U. S. C., title 12, sec. 1848. As amended by Acts of Aug. 28, 1958 (72 Stat. 951) and July 1, 1966 (80 Stat. 240).]

Acquisitions, Mergers, and Consolidations

Emergency Action

Sec. 11. (b) The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comp-

troller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

AMENDMENTS TO
INTERNAL REVENUE CODE OF 1954

Tax provisions

SEC. 10. (a) Subchapter O of chapter 1 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new part:

"PART VIII—DISTRIBUTION AND SALES PURSUANT TO BANK HOLDING COMPANY ACT OF 1956

"SEC. 1101. DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT.

"(a) DISTRIBUTION OF CERTAIN NON-BANKING PROPERTY.—

"(1) DISTRIBUTION OF PROHIBITED PROPERTY.—If—

"(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c)(2) applies)—

"(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) to a shareholder, in exchange for its preferred stock, or

"(iii) to a security holder, in exchange for its securities, and

"(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act.

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

"(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c)(2) APPLIES.—If—

"(A) a qualified bank holding corporation distributes—

"(i) common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock, or

"(iii) preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock, or

"(iv) securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder in exchange for its securities, and

"(B) any preferred stock received has substantially the same forms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

"(3) PRO RATA AND OTHER REQUIREMENTS.—

"(A) IN GENERAL.—Paragraphs (1) and (2) of this subsection, or paragraphs (1) and (2) of subsection (b), as the case may be, shall apply to any distribution to the shareholders of a qualified bank holding corporation only if each distribution—

"(i) which is made by such corporation to its shareholders after July 7, 1970, and on or before the date on which the Board makes its final certification under subsection (e), and

"(ii) to which such paragraph (1) or (2) applies (determined without regard to this paragraph),

meets the requirements of subparagraph (B), (C), or (D).

"(B) PRO RATA REQUIREMENTS.—A distribution meets the requirements of this subparagraph if the distribution is pro rata with respect to all shareholders of the distributing qualified bank holding corporation or with respect to all shareholders of common stock of such corporation.

"(C) REDEMPTIONS WHEN UNIFORM OFFER IS MADE.—A distribution meets the requirements of this subparagraph if the distribution is in exchange for stock of the distributing qualified bank holding corporation and such distribution is pursuant to a good faith offer made on a uniform basis to all shareholders of the distributing qualified bank holding corporation or to all shareholders of common stock of such corporation.

"(D) NON-PRO RATA DISTRIBUTIONS FROM CERTAIN CLOSELY-HELD CORPORATIONS.—A distribution meets the requirements of this subparagraph if such distribution is made by a qualified bank holding corporation which does not have more than 10 shareholders (within the meaning of section 1371 (a)(1)) and does not have as a shareholder a person (other than an estate) which is not an individual, and if the Board (after consultation with the Secretary or his delegate) certifies that—

"(i) a distribution which meets the requirements of subparagraph (B) or (C) is not appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, and

"(ii) the distribution being made is necessary or appropriate to effectuate section 4 of the policies of such Act.

"(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation has made any distribution pursuant to subsection (b) or has made an election under section 6158 with respect to bank property (as defined in section 6158(f)(3)).

"(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—In the case of a distribution to which paragraph (1) or (2) applies but which—

"(A) results in a gift, see section 2501 and following, or

"(B) has the effect of the payment of compensation, see section 61.

"(b) CORPORATION CEASING TO BE A BANK HOLDING COMPANY.—

"(1) DISTRIBUTIONS OF PROPERTY WHICH CAUSE A CORPORATION TO BE A BANK HOLDING COMPANY.—If—

"(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c)(3) applies)—

"(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) to a shareholder, in exchange for its preferred stock, or

"(iii) to a security holder, in exchange for its securities, and

"(B) the Board has, before the distribution, certified that—

"(i) such property is all or part of the property by reason of which such corporation

controls (within the meaning of section 2(a) of the Bank Holding Company Act) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c)(3), and

"(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

"(2) DISTRIBUTIONS OF STOCK AND SECURITIES RECEIVED IN AN EXCHANGE TO WHICH SUBSECTION (c)(3) APPLIES.—If—

"(A) a qualified bank holding corporation distributes—

"(i) common stock received in an exchange to which subsection (c)(3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) common stock received in an exchange to which subsection (c)(3) applies to a shareholder in exchange for its common stock, or

"(iii) preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock, or

"(iv) securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder, in exchange for its securities, and

"(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

"(3) PRO RATA AND OTHER REQUIREMENTS.—For pro rata and other requirements, see subsection (a)(3).

"(4) EXCEPTION.—This subsection shall not apply to any distribution by a corporation if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation has made any distribution pursuant to subsection (a) or has made an election under section 6158 with respect to prohibited property.

"(5) DISTRIBUTIONS INVOLVING GIFT OR COMPENSATION.—In the case of a distribution to which paragraph (1) or (2) applies but which—

"(A) results in a gift, see section 2501 and following, or

"(B) has the effect of the payment of compensation, see section 61.

(c) PROPERTY ACQUIRED AFTER JULY 7, 1970.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

"(A) any property acquired by the distributing corporation after July 7, 1970, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss) with respect to a reorganization described in section 368(a)(1)(A), (B), (E), or (F), or

"(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after July 7, 1970, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on July 7, 1970, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss) with respect to a reorganization described in section 368(a)(1)(A), (B), (E), or (F), or

"(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation

which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1), or

(D) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 354 or 356 with respect to a reorganization described in section 368(a)(1) (A) or (B), unless such property was acquired by the distributing corporation in exchange for property which the distributing corporation could have distributed under subsection (a)(1) or (b)(1).

(2) EXCHANGES INVOLVING PROHIBITED PROPERTY.—If—

"(A) any qualified bank holding corporation exchanges (i) property, which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b)(1)(B)(i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property,

"(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a)(2)(A), and

"(C) before such distribution, the Board has certified with respect to the property exchanged which consists of property which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act,

then paragraph (1) shall not apply with respect to such distribution.

"(3) EXCHANGES INVOLVING INTERESTS IN BANK.—If—

"(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property.

"(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b)(2)(A), and

"(C) before such distribution, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

"(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank holding company before any property of the same kind was distributed under subsection (b)(1) or exchanged under this paragraph, and

"(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

(d) DISTRIBUTIONS TO AVOID FEDERAL INCOME TAX.—

"(1) PROHIBITED PROPERTY.—Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after July 7, 1970, to any corporation, property (other than prohibited property) as part of a plan one of the principle purposes of which is the distribution of the earnings and profits of any corporation.

"(2) BANKING PROPERTY.—Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after July 7, 1970, to any corporation, property (other than property described in subsection (b)(1)(B)(i)) as part of a plan one of the principle purposes of which is the distribution of the earnings and profits of any corporation.

(e) FINAL CERTIFICATION.—

"(1) FOR SUBSECTION (a).—Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act

to be held by a bank holding company) disposed of all of the property the disposition of which is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act.

"(2) FOR SUBSECTION (b).—Subsection (b) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) ceased to be a bank holding company.

(f) CERTAIN EXCHANGES OF SECURITIES.—In the case of an exchange described in subsection (a)(2)(A)(iv) or subsection (b)(2)(A)(iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principle amount of the securities received does not exceed the principle amount of the securities exchanged.

SEC. 1102. SPECIAL RULES

"(a) BASIS OF PROPERTY ACQUIRED IN DISTRIBUTIONS.—If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary or his delegate—

"(1) if the property is received by a shareholder with respect to stock without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock, or

"(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by the amount of gain to the taxpayer recognized on the property received.

"(b) PERIODS OF LIMITATION.—The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until 5 years after the distributing corporation notifies the Secretary or his delegate (in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe)—

"(1) that the final certification required by subsection (e) of section 1101 has been made, or

"(2) that such final certification will not be made;

and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

"(c) ALLOCATION OF EARNINGS AND PROFITS.—

"(1) DISTRIBUTION OF STOCK IN A CONTROLLED CORPORATION.—In the case of a distribution by a qualified bank holding corporation under section 1101 (a)(1) or (b)(1) of stock in a controlled corporation, proper allocation with respect to the earning and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

"(2) EXCHANGES DESCRIBED IN SECTION 1101 (c) (2) or (3).—In the case of any exchange described in section 1101(c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

"(3) DEFINITION OF CONTROLLED CORPORATION.—For purposes of paragraph (1), the term 'controlled corporation' means a corporation with respect to which at least 80 per cent of the total combined voting power of all classes of stock entitled to vote and at least 80 per cent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

"(d) ITEMIZATION OF PROPERTY.—In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

SEC. 1103. DEFINITIONS.

(a) BANK HOLDING COMPANY; BANK HOLDING COMPANY ACT.—For purposes of this part—

(1) BANK HOLDING COMPANY.—The term "bank holding company" means—

(A) a bank holding company within the

meaning of section 2(a) of the Bank Holding Company Act, or

(B) a bank holding company subsidiary within the meaning of section 2(d) of such Act.

(2) BANK HOLDING COMPANY ACT.—The term "Bank Holding Company Act" means the Bank Holding Company Act of 1956, as amended through December 31, 1970 (12 U.S.C. 1841 et seq.).

(b) QUALIFIED BANK HOLDING CORPORATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this part the term "qualified bank holding corporation" means any corporation (as defined in section 7701(a)(3)) which is a bank holding company and which holds prohibited property acquired by it—

(A) on or before July 7, 1970,

(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

(C) in exchange for all of its stock in an exchange described in section 1101 (c)(2) or (c)(3).

(2) LIMITATIONS.—

(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on July 7, 1970, if the Bank Holding Company Act Amendment of 1970 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

(i) property acquired by it on or before July 7, 1970,

(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101(c)(2) or (3).

For purposes of this subparagraph, property held by a corporation having control of the corporation or by a subsidiary of the corporation shall be treated as held by the corporation.

(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in sub-paragraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

(i) on or before July 7, 1970,

(ii) in a distribution (with respect to stock held by it on July 7, 1970, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

(iii) in exchange for all of its stock in an exchange described in section 1101 (c)(2) or (3).

(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

(3) CERTAIN SUCCESSOR CORPORATIONS.—For purposes of this subsection, a successor corporation in a reorganization described in section 368(a)(1)(F) shall succeed to the status of its predecessor corporation as a qualified bank holding corporation.

(c) PROHIBITED PROPERTY.—For purposes of this part, the term "prohibited property" means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section. The term "prohibited property" also includes shares of any company not in excess of 5 per cent of the outstanding voting shares of such company if the prohibitions of section 4 of such Act apply to the shares of such company in excess of such 5 per cent.

(d) NONEXEMPT PROPERTY.—For purposes of this part, the term "nonexempt property" means—

(1) obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace,

(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision, or

(3) money, and the right to receive money not evidenced by a security or obligation (other than

a security or obligation described in paragraph (1) or (2)).

(e) BOARD.—For purposes of this part, the term "Board" means the Board of Governors of the Federal Reserve System.

(f) CONTROL; SUBSIDIARY.—For purposes of this part—

(1) CONTROL.—Except as provided in section 1102(c)(3), a corporation shall be treated as having control of another corporation if such corporation has control (within the meaning of section 2(a)(2) of the Bank Holding Company Act) of such other corporation.

(2) SUBSIDIARY.—The term "subsidiary" has the meaning given to such term by section 2(d) of the Bank Holding Company Act.

(g) ELECTION TO FOREGO GRANDFATHER PROVISION FOR ALL PROPERTY REPRESENTING PRE-JUNE 30, 1968, ACTIVITIES.—Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act as if such Act did not contain the proviso of section 4(a)(2) thereof. Any election under this subsection shall apply to all property described in such proviso and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable. An election under this subsection or subsection (h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Board that the bank holding company has disposed of either all banking property or all nonbanking property.

(h) ELECTION TO DIVEST ALL BANKING OR NONBANKING PROPERTY IN CASE OF CERTAIN CLOSELY HELD BANK HOLDING COMPANIES.—Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act as if such Act did not contain clause (ii) of section 4(c) of such Act. Any election under this subsection shall apply to all property described in subsection (c), or to all property eligible to be distributed without recognition of gain under section 1101(b)(1), as the case may be, and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable.

(b) AMENDMENT OF SECTION 311(d).—Paragraph (2) of section 311(d) of such Code (relating to exceptions and limitations to the recognition of gain where appreciated property is used to redeem stock) is amended by striking out "and" at the end of subparagraph (F), by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "; and", and by adding at the end thereof the following new subparagraph:

"(H) a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a), if with respect to such distributee, subsection (a)(1) or (b)(1) of section 1101 (relating to distributions pursuant to Bank Holding Company Act) applies to such distribution."

(c) CLERICAL AMENDMENT.—The table of parts for subchapter O of chapter 1 of such Code is amended by striking out "of 1956".

(d) EFFECTIVE DATE.—

(1) FOR SUBSECTION (a).—The amendments made by subsections (a) and (c) shall take effect on October 1, 1977, with respect to distributions after July 7, 1970, in taxable years ending after July 7, 1970, but only in the case of qualified bank holding corporations (within the meaning of section 1103(b) of the Internal Revenue Code of 1954, as amended by subsection (a) of this section).

(2) SPECIAL RULE FOR CERTIFYING DISTRIBUTIONS WHICH HAVE ALREADY TAKEN PLACE.—For purposes of sections 1101(a)(1)(B), 1101(a)(3)(D), 1101(b)(1)(B), 1101(c)(2)(C), 1101(c)(3)(C), and 1101(e) of the Internal Revenue Code of 1954 (as amended by subsection (a) of this section), in the case of any distribution which takes place on or before the 90th day after the date of the enactment of this Act, a certification by the Federal Reserve Board described in any such section shall be treated as made before the distribution (or, in the case of section 1101(e), before the close of the calendar year following the calendar year in which the last distribution occurred) if application for such certification is made before the close of the 90th day after the date of the enactment of this Act.

(3) PERIOD OF LIMITATIONS.—If refund or credit of any overpayment of income tax attributable to the amendment made by subsection (a) is pre-

vented at any time before October 1, 1978, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before October 1, 1978.

(4) FOR SUBSECTION (b).—The amendment made by subsection (b) shall take effect on October 1, 1977, with respect to distributions after December 31, 1975, in taxable years ending after December 31, 1975.

SEC. 3. INSTALMENT PAYMENT OF TAX

(a) INSTALMENT PAYMENT.—Subchapter A of chapter 62 of the Internal Revenue Code of 1954 (relating to place and due date for payment of tax) is amended by adding at the end thereof the following new section:

"SEC. 6158. INSTALMENT PAYMENT OF TAX ATTRIBUTABLE TO DIVESTITURES PURSUANT TO BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.

"(a) ELECTION OF EXTENSION.—If, after July 7, 1970, a qualified bank holding corporation sells bank property or prohibited property, the divestiture of either of which the Board certifies, before such sale, is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, the tax under chapter 1 attributable to such sale shall, at the election of the taxpayer, be payable in equal annual instalments beginning with the due date (determined without extension) for the taxpayer's return of tax under chapter 1 for the taxable year in which the sale occurred and ending with the corresponding date in 1985. If the number of instalments determined under the preceding sentence is less than 10, such number shall be increased to 10 equal annual instalments which begin as provided in the preceding sentence and which end on the corresponding date 10 years later. An election under this subsection shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe.

"(b) LIMITATIONS.—

"(1) TREATMENT NOT AVAILABLE TO TAXPAYER FOR BOTH BANK PROPERTY AND PROHIBITED PROPERTY.—This section shall not apply to any sale of prohibited property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the taxpayer) has made an election under subsection (a) with respect to bank property or has made any distribution pursuant to section 1101(b). This section shall not apply to bank property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the taxpayer) has made an election under subsection (a) with respect to prohibited property or has made any distribution pursuant to section 1101(a).

"(2) TREATMENT NOT AVAILABLE FOR CERTAIN INSTALMENT SALES.—No election may be made under subsection (a) with respect to a sale if the income from such sale is being returned at the time and in the manner provided in section 453 (relating to instalment method).

"(c) ACCELERATION OF PAYMENTS.—If an election is made under subsection (a) and before the tax attributable to such sale is paid in full—

"(1) any instalment under this section is not paid on or before the date fixed by this section for its payment, or

"(2) the Board fails to make a certification similar to the applicable certification provided in section 1101(e) within the time prescribed therein (for this purpose treating the last such sale as constituting the last distribution),

then the extension of time for payment of tax provided in this section shall cease to apply, and any portion of the tax payable in instalments shall be paid on notice and demand from the Secretary or his delegate.

"(d) PRORATION OF DEFICIENCY TO INSTALMENTS.—If an election is made under subsection (a) and a deficiency attributable to the sale has been assessed, the deficiency shall be prorated to such instalments. The part of the deficiency so prorated to any instalment the date for payment of which has not arrived shall be collected at the same time as, and as part of, such instalment. The part of the deficiency so prorated to any instalment the date for payment of which has arrived shall be paid on notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

"(e) BOND MAY BE REQUIRED.—If an election is made under this section, section 6165 shall apply as though the Secretary were extending the time for payment of the tax.

"(f) DEFINITIONS.—For purposes of this section—

"(1) TERMS HAVE MEANINGS GIVEN TO THEM BY SECTION 1103.—The terms 'qualified bank holding corporation', 'Bank Holding Company Act',

'Board'; 'control', and 'subsidiary' have the respective meanings given to such terms by section 1103.

"(2) PROHIBITED PROPERTY.—The term 'prohibited property' means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(a)(1).

"(3) BANK PROPERTY.—The term 'bank property' means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(b)(1).

"(g) CROSS REFERENCES.—

"(1) Security.—For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

"(2) Period of limitation.—For extension of the period of limitation in the case of an extension under this section, see section 6503(i)."

(b) EXTENSION OF TIME FOR COLLECTION OF TAX.—Section 6503 of such Code (relating to suspension of running of period of limitation) is amended by redesigning subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) EXTENSION OF TIME FOR COLLECTING TAX ATTRIBUTABLE TO DIVESTITUTES PURSUANT TO BANK HOLDING COMPANY ACT AMENDMENTS OF 1970.—The running of the period of limitations for collection of the tax attributable to a sale with respect to which the taxpayer makes an election under section 6158(a) shall be suspended for the period during which there are any unpaid instalments of such tax."

(c) TECHNICAL AMENDMENTS.—

(1) The table of sections for subchapter A of chapter 62 of such Code is amended by adding at the end thereof the following new item:

"Sec. 6158. Instalment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970."

(2) Subsection (a) of section 6151 of such Code (relating to time and place for paying tax shown on returns) is amended by striking out "section," and inserting in lieu thereof "subchapter,".

(3) Paragraph (2) of section 6601(b) of such Code (relating to interest) is amended—

(A) by striking out "or 6156(a)" and inserting in lieu thereof ", 6156(a), or 6158(a)",

(B) by striking out "or 6156(b)" and inserting in lieu thereof ", 6156(b), or 6158(a)"; and

(C) by inserting at the end thereof the following new sentence:

"For purposes of subparagraph (A), section 6158(a) shall be treated as providing that the date prescribed for payment of each instalment shall not be later than the date prescribed for payment of the 1985 instalment."

(d) APPLICABILITY TO CERTAIN SUCCESSOR CORPORATIONS.—If, after July 7, 1970, and before August 1, 1974—

(1) a corporation acquires substantially all of the properties of a qualified bank holding corporation (as defined in section 1103(b) of the Internal Revenue Code of 1954) in a transaction described in sections 368(a)(1)(A) and 368(a)(2)(D), and

(2) the acquiring corporation (or a corporation in control of the acquiring corporation) acquires beneficial interests in shares described in section 2(g)(2) of the Bank Holding Company Act (as defined in section 1103(a)(2) of the Internal Revenue Code of 1954) in a transaction to which section 351 applies,

then, the acquiring corporation (or a corporation which is in control (within the meaning of section 2(a)(2) of such Act) of the acquiring corporation or a subsidiary (within the meaning of section 2(d) of such Act) of the corporation so in control) shall be treated as a qualified bank holding corporation for purposes of section 1103(b) and 6158 of the Internal Revenue Code of 1954 and the shares described in such section 2(g)(2) shall be considered property which is acquired by such corporation, for purposes of section 1101(c)(1)(A)(iii) of the Internal Revenue Code of 1954, after July 7, 1970.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall take effect on October 1, 1977, with respect to sales after July 7, 1970, in taxable years ending after July 7, 1970, but only in the case of qualified bank holding corporations (within the meaning of section 1103(b) of the Internal Revenue Code of 1954, as amended by section 2(a) of this Act).

(2) SPECIAL RULE FOR CERTIFYING SALES WHICH HAVE ALREADY TAKEN PLACE.—For purposes of section 6158(a) of the Internal Revenue Code of 1954 (as added by subsection (a) of this section) in the case of any sale which takes place on or before the 90th day after the date of the enact-

ment of this Act, a certification by the Federal Reserve Board described in section 6158(a) shall be treated as made before the sale if application for such certification is made before the close of the 90th day after the date of the enactment of this Act.

(3) REFUND OF TAX.—

(A) IN GENERAL.—If any tax attributable to a sale which occurred before October 1, 1977, is payable in annual instalments by reason of an election under section 6158(a) of the Internal Revenue Code of 1954, any portion of such tax for which the due date of the instalment does not occur before October 1, 1977, shall, on application of the taxpayer, be treated as an overpayment of tax.

(B) INTEREST ON OVERPAYMENTS.—For purposes of section 6611(b), in the case of any overpayment attributable to subparagraph (A), the date of the overpayment shall be the day which is 6 months after the latest of the following:

(i) the date on which application for refund or credit of such overpayment is filed,

(ii) the due date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 of the Internal Revenue Code of 1954 for the taxable year the tax of which is being refunded or credited, or

(iii) the date of the enactment of this Act.

(C) EXTENSION OF PERIOD OF LIMITATIONS.—If any refund or credit of tax attributable to the application of subparagraph (A) is prevented at any time before October 1, 1978, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before October 1, 1978.

SAVING PROVISION

Saving clause

SEC. 11. (a) Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

Applicability of and procedure with respect to antitrust laws

(b) The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any cash transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act. 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attached in any judicial proceeding on the ground that it alone

and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

Judicial rights of Board and State bank supervisors

(c) In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 3 of this Act, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

Litigation not initiated before July 1, 1966

(d) Any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this amendment, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

Litigation pending on or after July 1, 1966

(e) Any court having pending before it on or after the date of enactment of this amendment any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act shall apply the substantive rule of law set forth in section 3 of this Act.

Meaning of "antitrust laws"

(f) For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in pari materia.

[U. S. C., title 12, 1849. As amended by Acts of July 1, 1966 (80 Stat. 240) and Dec. 31, 1970 (84 Stat. 1766) Oct. 2, 1976 (90 Stat. 1503) and November 16, 1977 (91 Stat. 1390). The date of the amendment referred to in paragraphs (d) and (e) is July 1, 1966.]

SEPARABILITY OF PROVISIONS

Separability clause

SEC. 12. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

Act of December 31, 1970 (84 Stat. 1766)

PARTY IN INTEREST

SEC. 105. With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 3 of the Bank Holding Company Act of 1956, to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act, or to engage in an activity otherwise prohibited under section 106 of this Act, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 9 of such Act of 1956 or as otherwise provided by law.

[U. S. C., title 12, sec. 1850.]

CONDITIONAL TRANSACTIONS

Definitions

SEC. 106. (a) As used in this section, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 2 of the Bank Holding Company Act of 1956. For purposes of this section only, the term "company", as used in section 2 of the Bank Holding Company Act of 1956, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The

term "trust service" means any service customarily performed by a bank trust department.

[U. S. C., title 12, sec. 1971.]

Tie-in arrangements

(b) (1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition as it considers will not be contrary to the purposes of this section.

(2) (A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding and extension of credit to an executive officer or director of, or other persons who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another Bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term "extension of credit" shall have the same meaning given it in section 23A of the Federal Reserve Act and the term "executive officer" shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

(F) (i) Any bank which violates or any officer,

director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates any provision of section 106(b) (2) shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, or the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counselling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(iii) The bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subsection (iv). If no hearing is requested as here in provided, the assessment shall constitute a final and unappealable order.

(iv) Any bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be. The Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706 (2) (E) of title 5, United States Code.

(v) If any bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) The Comptroller of the Currency, the Board and the Federal Deposit Insurance Corporation shall promulgate regulations establishing procedures necessary to implement this section.

(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(G) (i) Each executive office and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintains a corresponding account in the name of such bank. Such report shall include the following information:

(1) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

(2) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

(3) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

(4) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

(ii) Each insured bank shall compile the reports filed pursuant to subparagraph (G) (i) and forward such compilation to the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, and the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank.

(iii) Each insured bank shall include in the report required to be made under subsection (k) (1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(k) (1)) a list by name of each executive officer or stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of the bank who files information required by subparagraph (G) (i) and the aggregate amount of all extensions of credit by correspondent banks to such executive officers or stockholders of record, any company controlled by such executive officers or stockholders, and any political or campaign committee the funds or services of which will benefit such executive officers or stockholders, or which is controlled by such executive officers or stockholders.

[U. S. C., title 12, sec. 1972.]

Judicial proceedings

(c) The district courts of the United States have jurisdiction to prevent and restrain violations of subsection (b) of this section and it is the duty of the United States attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. The proceedings may be by way of a petition setting forth the case and praying that the violation be enjoined or otherwise prohibited. When the parties complained of have been duly notified of the petition, the court shall proceed, as soon as possible, to the hearing and determination of the case. While the petition is pending, and before final decree, the court may at any time make such temporary restraining order or prohibition as it deems just. Whenever it appears to the court that the ends of justice require that other parties be brought before it, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and subpoenas to that end may be served in any district by the marshal thereof.

[U. S. C., title 12, sec. 1973.]

Subpoenas in actions by United States

(d) In any action brought by or on behalf of the United States under subsection (b), subpoenas for witnesses may run into any district, but no writ of subpoena may issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the prior permission of the trial court upon proper application and cause shown.

[U. S. C., title 12, sec. 1974.]

Civil actions

(e) Any person who is injured in his business or property by reason of anything forbidden in subsection (b) may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover three times the amount of the damages sustained by him and the cost of suit, including a reasonable attorney's fee.

[U. S. C., title 12, sec. 1975.]

Injunctions

(f) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of subsection (b), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

[U. S. C., title 12, sec. 1976.]

Limitation of actions

(g) (1) Subject to paragraph (2), any action to enforce any cause of action under this section shall be forever barred unless commenced within four years after the cause of action accrued.

(2) Whenever any enforcement action is instituted by or on behalf of the United States with respect to any matter which is or could be the subject of a private right of action under this section, the running of the statute of limitations in respect of every private right of action arising under this section and based in whole or in part on such matter shall be suspended during the pendency of the enforcement action so instituted and for one year thereafter: *Provided*, That whenever the running of the statute of limitations in respect of a cause of action arising under this section is suspended under this paragraph, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within the four-year period referred to in paragraph (1).

[U. S. C., title 12, sec. 1977.]

Actions under other Federal or State laws

(h) Nothing contained in this section shall be construed as affecting in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this section. No regulation or order issued by the Board under this section shall in any manner constitute a defense to such action.

[U. S. C., title 12, sec. 1978.]