

FEDERAL RESERVE BANK  
OF NEW YORK

[Circular No. 8676]  
November 13, 1979]

SALE OF INSURANCE BY BANK HOLDING COMPANIES

Amendment to Regulation Y

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

In May 1978, the Board of Governors of the Federal Reserve System announced that, in view of various court decisions, it would reconsider the provision of its Regulation Y authorizing bank holding companies to act as general insurance agents in communities with a population of 5,000 or less; at the same time, the Board suspended consideration of applications relating to that activity. The Board has reviewed the comments received on the provision and has adopted an amendment to the regulation, effective December 5, 1979, to authorize bank holding companies or their nonbank subsidiaries to act as agents for the sale of general insurance in communities with a population of 5,000 or less.

The following is quoted from the Board's statement on this matter:

The Board acted in conformity with court action requiring the Board to reconsider a 1971 rule permitting this activity and after consideration of comment received upon a proposal to alter the language of the 1971 rule.

The revised rule permits bank holding companies or their nonbank subsidiaries with a principal place of banking business in a community with a population of 5,000 or less to sell any type of insurance in such a community.

A provision of the previous rule permitting such activity in communities with inadequate insurance agency facilities was deleted.

Enclosed is a copy of the Regulation Y amendment. Questions regarding this matter may be directed to our Domestic Banking Applications Department (Tel. No. 212-791-5861).

THOMAS M. TIMLEN,  
*First Vice President.*

Board of Governors of the Federal Reserve System

BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

AMENDMENT TO REGULATION Y

(effective December 5, 1979)

**Nonbank Activities**

*AGENCY:* Board of Governors of the Federal Reserve System.

*ACTION:* Final rule.

*SUMMARY:* The United States Court of Appeals for the Fifth Circuit, in *Alabama Association of Insurance Agents, Inc. v. Board of Governors of the Federal Reserve System*, 533 F2d 224 (5th Cir. 1976); rehearing denied, 558 F2d 729 (5th Cir. 1977); *cert. denied*, 435 U.S. 904 (1978), remanded to the Board for further consideration that part of the Board's Regulation Y authorizing bank holding companies to act as agents or brokers with respect to general insurance sold in a community that has a population not exceeding 5,000 persons, 12 C.F.R. § 225.4(a)(9)(iii)(a). The Board published that provision, together with the provision of Regulation Y authorizing bank holding companies to sell insurance in towns with inadequate insurance facilities (12 C.F.R. § 225.4(a)(9)(iii)(b)) for public comment in accordance with the Court's opinion. 43 F.R. 23588 (1978).

The Board has considered all comments received and has determined that the sale of general insurance by bank holding companies in communities with populations not exceeding 5,000 is an activity "closely related" to banking within the meaning of section 4(c)(8) of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1843(c)(8). The Board also has determined that the regulatory language authorizing that activity was so broad as to permit remote insurance agency activities not intended to be authorized and the Board appropriately restricted the scope of that activity. Finally, the Board has found that the sale of insurance in communities having inadequate insurance facilities is not an activity "closely related" to banking within the meaning of the

Act and has deleted that provision from Regulation Y.

*EFFECTIVE DATE:* December 5, 1979.

*FOR FURTHER INFORMATION CONTACT:* Richard M. Whiting, Senior Attorney (202/452-3779), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

*SUPPLEMENTARY INFORMATION:*

(1) The Fifth Circuit Court of Appeals remanded to the Board for further consideration that part of 12 C.F.R. § 225.4(a)(9) that authorized bank holding companies to engage in general insurance agency activities in communities with a population not exceeding 5,000. The Court instructed the Board to make further findings to establish whether that activity is closely related to banking within the meaning of the Act. Also, the Court instructed the Board to make findings directed toward determining whether the language of that provision permits remote insurance agency activities not intended to be authorized by the Act.

The Board solicited public comments in accordance with the Court's opinion regarding the provision of Regulation Y authorizing bank holding companies to conduct general insurance agency activities in communities with a population not exceeding 5,000 inhabitants. In addition, the Board solicited comments from the public regarding whether the activity of acting as general insurance agent in communities demonstrated to have inadequate insurance agency facilities is closely related to banking within the meaning of section 4(c)(8) of the Act.

The Board has considered all comments received and completed its review of 12 C.F.R. § 225.4(a)(9)(iii). No requests for a hearing were received by the Board. The Board now makes certain findings and adopts certain

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amendments to that portion of Regulation Y in order to conform it to the opinion of the Fifth Circuit Court of Appeals.

From the record, including public comments received, the Board has concluded that the sale of general insurance in communities with a population not exceeding 5,000 is an activity closely related to banking within the meaning of section 4(c)(8) of the Act.<sup>1</sup> In this connection, the Board notes that since 1916 national banks in fact have been authorized pursuant to 12 U.S.C. § 92 to sell general insurance in communities having a population not exceeding 5,000. Additionally, it appears that state banks in approximately 34 states may conduct general insurance agency activities to the extent that national banks may engage in that activity and, in fact, many state banks are engaged in that activity. Moreover, the record shows that many commentators view the sale of general insurance in a small town to be a financial service similar to banking and that in small towns bankers often are the only persons qualified to provide insurance agency services. Finally, numerous commentators noted that the economic viability of banks located in small towns frequently depends upon the income derived from general insurance agency activities and banking functions in some instances would not continue absent general insurance agency activities. Accordingly, the Board has concluded that the sale of insurance in communities having a population not exceeding 5,000 is an activity closely related to banking. Moreover, the Board notes that no evidence has been presented to contradict the Board's previous determinations that proposals approved under this provision were for activities closely related to banking and, that in each of these proposals, the public benefits outweighed possible adverse effects, as required by section 4(c)(8) of the Act.

The Board also considered whether the language authorizing bank holding companies to engage in general insurance agency activities was so broad as to permit remote insurance agency activities not permissible under the Act. Three relevant comments were received regarding this issue and the Board has concluded that the regulation ostensibly permits the pursuit of general insurance agency activities in small towns from offices in large communities, and the

<sup>1</sup> The courts have set forth the following general guidelines for determining whether a proposed activity may be found by the Board to be closely related to banking: (1) banks generally have in fact provided the proposed services; (2) banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed service; or (3) banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *National Courier Association v. Board of Governors*, 516 F.2d 1229 (D.C. Cir. 1975).

sale of general insurance in small towns referred from offices located in large communities. The Board believes that such activities were not intended for bank holding companies and has adopted language designed to eliminate such activities. Further, this language is intended to preserve the opportunity for bank holding company subsidiaries to generate insurance agency income, generally allow small one- and multi-bank holding companies the benefits of insurance agency income, and generally eliminate larger one- and multi-bank holding companies from engaging in the general insurance agency field. However, in considering this language the Board expressed concern regarding the apparent disparity of treatment between bank holding companies and their nonbank subsidiaries and national banks and their branches. Accordingly, the Board stated that in appropriate circumstances it would consider applications by a bank holding company to sell general insurance in small communities when that bank holding company also has a branch bank located in that same community. In such circumstances the Board will proceed on a case-by-case basis and the burden will be upon the bank holding company applicant to demonstrate that its proposal meets all the requirements of section 4(c)(8) of the Act.

In addition, the Board considered two relevant comments regarding the provision in Regulation Y authorizing the sale of general insurance in towns having inadequate insurance agency facilities. Both commentators noted that no basis in law or fact exists upon which to determine that such activity is "closely related" to banking within the meaning of section 4(c)(8) of the Act. The Board concurs with this conclusion and has deleted 12 C.F.R. § 225.4(a)(9)(iii)(b) from Regulation Y.

Also, the Board received several other comments in connection with its consideration of this provision. An overwhelming number of the commentators remarked that the sale of general insurance in small towns was a substantial convenience to, and increased insurance agency competition in, those communities. This information is relevant to the public benefits determination the Board must make; however, it is not relevant to the closely related determination that the Board must make under section 4(c)(8) of the Act and, therefore, is not within the factors to be considered by the Board. Other commentators recommended either lowering or raising the population level in 12 C.F.R. § 225.4(a)(9)(iii)(a). However, as the primary basis for the Board's determination that this activity is closely related to banking is that Congress authorized national banks by 12 U.S.C. § 92 to

sell general insurance in places of 5,000 population, the Board decided to reject those recommendations. Also, one commentator suggested that the Board adopt regulations similar to 12 U.S.C. § 2 that would require income generated by insurance agency activity to be attributed directly to the bank rather than to the holding company. This comment is applicable to the sale of all types of insurance by bank holding companies pursuant to Regulation Y. The Board believes that this comment is more appropriately addressed in another manner and its staff presently is examining this issue. In addition, certain other comments were received by the Board that were of a general nature.

This regulation is issued pursuant to 5 U.S.C. § 553, 12 C.F.R. § 262.2, and in accordance with the Board's Statement of Policy Regarding Expanded Rulemaking Procedures, 44 Federal Register 3957. Since the regulation essentially is a reformulation of a regulation previously published for public comment, expedited rule-

making procedures were followed in issuing this regulation in accordance with the Board's Policy Statement.

(2) This action is taken pursuant to the Board's authority under section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8).

#### **Text of Amendment**

Effective December 5, 1979, subparagraph (iii) of § 225.4(a)(9) is amended to read as follows:

**(iii) any insurance sold by a bank holding company or a nonbanking subsidiary in a community that has a population not exceeding 5,000 (as shown by the last preceding decennial census) provided the principal place of banking business of the bank holding company is located in a community having a population not exceeding 5,000.**