

FEDERAL RESERVE BANK
OF NEW YORK

Circular No. 8753
February 8, 1980

REGULATION Y

Revised Interpretation Relating to Transferred Shares or Other Assets

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

The Board of Governors of the Federal Reserve System has issued a revised interpretation of its Regulation Y, "Bank Holding Companies and Change in Bank Control," to further clarify its views regarding Section 2(g)(3) of the Bank Holding Company Act. That section relates to the presumption of continued control by bank holding companies over certain transferred shares or other assets. The revised interpretation amplifies the interpretation issued by the Board of Governors in January 1978 and enclosed with this Bank's Circular No. 8279.

In its January 1978 interpretation, the Board stated that indebtedness giving rise to the presumption of continued control is not limited to debt incurred in connection with the transfer, but includes any debt outstanding at the time of transfer. The revised interpretation indicates that the presumption does *not* apply in a case where the transferee is indebted to the transferor or its subsidiaries and the indebtedness involves certain routine business credit of limited amounts or certain loans for personal or household purposes. For example, the presumption would not apply in a situation where the transferee is a business with a small amount of routine commercial borrowing or an individual who has personal borrowing — such as a credit card balance, a home mortgage loan, or an automobile loan — outstanding to the transferor or a lending subsidiary of the transferor.

A copy of the revised interpretation is enclosed. Questions regarding the interpretation 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

REVISED INTERPRETATION OF REGULATION Y

[Reg. Y; Docket No. R-0273]

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Revision of Interpretation.

SUMMARY: The Board is revising an interpretation issued in January 1978 (12 CFR 225.139), in order to amplify its views regarding the nature of indebtedness that gives rise to the presumption of continued control established by §2(g)(3) of the Bank Holding Company Act. Under the revised interpretation, the statutory presumption does not apply in a case where the transferee of property is indebted to the transferor if the indebtedness involves certain routine business credit of limited amounts or certain loans for personal or household purposes. This action is being taken because questions have arisen in the administration of the Act since the Board issued its 1978 interpretation. The action is intended to relieve a regulatory burden and facilitate transfers of divested assets by obviating the need for an administrative proceeding in cases falling within the interpretation.

EFFECTIVE DATE: Upon publication in the Federal Register [on or about February 7, 1980].

FOR FURTHER INFORMATION CONTACT: Robert E. Mannion, Deputy General Counsel (202/452-3274) or Bronwen Mason, Senior Attorney (202/452-3564), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 2(g)(3) of the Bank Holding Company Act (the "Act") establishes a presumption that, among other situations, where a transferee of shares is indebted to the transferor on the date of transfer, the transferor is presumed to continue to own or control indirectly the transferred shares. The presumption arises by operation of law, and may be terminated only by issuance of a Board determination "that the transferor is not in fact capable of controlling the transferee." Therefore, the transfer

will not be regarded as an effective divestiture of control of the shares unless the parties involved are able to satisfy the Board that the transferor/creditor cannot use the indebtedness to retain control of the shares in the hands of the transferee/debtor.

In its January 25, 1978, interpretation of section 2(g)(3) (12 CFR 225.139) the Board stated that indebtedness giving rise to the presumption of continued control is not limited to debt incurred in connection with the transfer, but includes any debt outstanding at the time of transfer from the transferee (including an individual) to the transferor and its subsidiaries. In the course of administering section 2(g)(3), questions have arisen concerning the operation of the presumption in cases where the transferee is a business with a small amount of routine commercial borrowing or an individual who has personal borrowing, such as a credit card balance, a home mortgage loan or an automobile loan outstanding to the transferor or a lending subsidiary. While the presumption might literally apply to transfers of property in these situations, the Board's interpretation of section 2(g)(3) of the Act is that the presumption should not apply in these situations. The revised interpretation reflects that position.

As a result of this interpretation, a transferor whose situation falls within the interpretation will be relieved of the burden of an administrative proceeding to seek a favorable determination. Hence, the Board's action should facilitate divestitures. Of course, while a statutory presumption may not apply in these situations, the Board would not be precluded from examining a particular transfer and finding that the divestiture was ineffective based on the facts of record; however, unless the Board made such a finding, the parties could treat the divestiture as effective.

In taking this action, the Board has not followed its expanded rulemaking procedures (44 F.R. 3957) nor the procedures of 5 U.S.C. 553(b) regarding notice, public participation, and deferred effective

date because: (1) the action relaxes a requirement, and (2) rulemaking procedures do not apply to interpretive rules.

To implement this action under the Board's authority in sections 2(g)(3) and 5(b) of the Bank Holding Company Act (12 U.S.C. 1841(g)(3), 1844(b)), 12 CFR 225.139 ("Presumption of continued control under section 2(g)(3) of the Bank Holding Company Act") is revised as follows:

1. Footnote 4 is deleted, and footnotes 5, 6, and 7 are renumbered 4, 5, and 6, respectively.

2. A new paragraph (c)(4) is added to read as follows:

(4) The term "indebtedness" giving rise to the presumption of continued control under section 2(g)(3) of the Act is not limited to debt incurred in connection with the transfer; it includes any debt outstanding at the time of transfer from the transferee to the transferor or its subsidiaries. However, the Board believes that not every kind of indebtedness was within the contemplation of the Congress when section 2(g)(3) was adopted. Routine business credit of limited amounts and loans for personal or household purposes are generally not the kinds of indebtedness that, standing alone, support a presumption that the creditor is able to control the debtor. Accordingly, the Board does not regard the presumption of section 2(g)(3)

as applicable to the following categories of credit, provided the extensions of credit are not secured by the transferred property and are made in the ordinary course of business of the transferor (or its subsidiary) that is regularly engaged in the business of extending credit: (i) consumer credit extended for personal or household use to an individual transferee; (ii) student loans made for the education of the individual transferee or a spouse or child of the transferee; (iii) a home mortgage loan made to an individual transferee for the purchase of a residence for the individual's personal use and secured by the residence; and (iv) loans made to companies (as defined in section 2(b) of the Act) in an aggregate amount not exceeding ten per cent of the total purchase price (or if not sold, the fair market value) of the transferred property. The amounts and terms of the preceding categories of credit should not differ substantially from similar credit extended in comparable circumstances to others who are not transferees. It should be understood that, while the statutory presumption in situations involving these categories of credit may not apply, the Board is not precluded in any case from examining the facts of a particular transfer and finding that the divestiture of control was ineffective based on the facts of record.

Board of Governors of the Federal Reserve System, January 31, 1980.