

FEDERAL RESERVE BANK  
OF NEW YORK

[ Circular No. 8867 ]  
July 3, 1980

PROPOSED AMENDMENT TO REGULATION Y  
Engaging in Real Estate Advisory Services by Bank Holding Companies

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

The Board of Governors of the Federal Reserve System has invited public comment on a proposal to amend its Regulation Y, "Bank Holding Companies and Change in Bank Control," in order to add a new nonbanking activity—real estate advisory services—to the list of those activities permissible for bank holding companies.

The following is quoted from the text of the Board's statement announcing the proposed amendment:

The proposal—to perform appraisals of real estate, other than single-family residences—was made in connection with the application of First Chicago Corporation, Chicago, Illinois, to retain shares of its subsidiary, Real Estate Research Corporation, Chicago, Illinois.

The Board also requested comment on First Chicago's assertion that certain advisory services provided by Real Estate Research Corporation to State and local governments should be permissible for bank holding companies.

The Board also announced today its determination not to publish for comment in the *Federal Register* notice of First Chicago's application with respect to certain advisory activities that have not previously been determined by the Board to be closely related to banking. The Board finds in this case no reasonable basis for First Chicago's opinion that these activities are closely related to banking.

Printed on the following pages is the text of the proposed amendment to Regulation Y, and the text of the Board's Order regarding a request by First Chicago Corporation to retain the shares of its subsidiary, Real Estate Research Corporation. Written comments on the proposals must be submitted by August 1, 1980, and may be sent to our Domestic Banking Applications Department.

ANTHONY M. SOLOMON,  
*President.*

## FEDERAL RESERVE SYSTEM

[Reg. Y; Docket No. R-0310]

### Application to Continue to Engage in Real Estate Advisory Services and Real Estate Appraisal Services and of Possible Rulemaking with Respect Thereto

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

**ACTION:** Notice of application and proposed rule.

**SUMMARY:** In connection with an application by First Chicago Corporation, Chicago, Illinois, to retain the shares of a subsidiary, the Board has been requested to add to the list of activities permissible for bank holding companies certain real estate advisory and appraisal services. The Board requests comments as to whether the proposed activity of "performing appraisals of any type of real estate, other than single-family residences" is closely related to banking or managing or controlling banks.

Applicant states that certain real estate-related advisory services, provided to State and local governments, have been previously specified by the Board as being permissible for bank holding companies as "providing financial advice to State and local governments, such as with respect to the issuance of their securities." The Board also requests comments as to whether these proposed activities are closely related to banking.

With respect to these activities and others that have been previously determined to be closely related to banking, the Board requests interested persons to comment on whether retention of the nonbanking company would result in public benefits that outweigh possible adverse effects.

**DATE:** Comments must be received by August 1, 1980.

**ADDRESS:** Comments, which should refer to Docket No. R-0310, may be mailed to Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room B-1122, except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 C.F.R. § 261.6(a)).

**FOR FURTHER INFORMATION CONTACT:** Michael E. Bleier, Senior Counsel (202-452-3721), or Michael L. Kadish, Attorney (202-452-3428), Legal Division, Board of Governors of the Federal Reserve System.

**SUPPLEMENTAL INFORMATION:** The Board of Governors has received an application filed pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 C.F.R. § 225.4(b)(2)) by First Chicago Corporation, Chicago, Illinois, for prior approval to retain shares of its subsidiary, Real Estate Research Corporation ("RERC"), Chicago, Illinois, a company engaged in a wide variety of real estate-related advisory and appraisal activities. Some of the activities that are the subject of the application have not previously been determined by the Board to be closely related to banking.

Section 225.4(a) of Regulation Y provides that a

bank holding company may file an application to engage in activities, other than those determined to be permissible for bank holding companies, if it is of the opinion that the proposed activity in the circumstances surrounding a particular case is closely related to banking or managing or controlling banks. The regulation further provides that the Board will publish in the *Federal Register* a notice of opportunity for hearing regarding the proposed activity only if it believes that there is a reasonable basis for the bank holding company's opinion.

Applicant acquired RERC in June 1970, and has been engaged since that time<sup>1</sup> in the following activities: (1) providing financial advice to State and local governments; (2) providing portfolio investment advice; (3) providing branch location, financial feasibility, and specialized market studies for nonaffiliated banks; (4) providing general economic information and advice, general economic statistical forecasting services, and industry studies; (5) advising State and local governments about methods available to finance real estate development projects; (6) evaluating projected income to determine for State and local governments whether debt resulting from proposed development projects can be adequately serviced; and (7) performing appraisals of all types of real estate, other than single-family residences. These activities are performed from offices of RERC in Chicago, Illinois; Atlanta, Georgia; Dallas and Houston, Texas; Miami, Florida; San Diego and San Francisco, California; and the District of Columbia. The geographic area served is the entire continental United States. RERC also engages in other real estate advisory activities that are not subjects of this notice because the Board has determined that there is no reasonable basis for Applicant's opinion that the activities are closely related to banking.

Applicant states that activity (5), "advising State and local governments about methods available to finance real estate development projects," and activity (6), "evaluating projected income to determine for State and local governments whether debt resulting from proposed development projects can be adequately serviced," are within the scope of the activity previously determined by the Board to be permissible for bank holding companies in section 225.4(a)(5)(v) of Regulation Y (12 C.F.R. § 225.4(a)(5)(v)). Applicant cites as examples of these activities, (a) analyzing the financial feasibility of converting obsolete urban buildings to new uses, and (b) examining the impact of a proposed freeway on land use, property values, tax receipts, and public expenditures. While the administrative history of that provision of Regulation Y indicates that the Board intended to restrict the scope of the activity, the Board believes nevertheless that these pro-

<sup>1</sup> Section 4 of the Act provides, *inter alia*, that nonbanking activities acquired between June 30, 1968, and December 31, 1970, by a company which became a bank holding company as a result of the 1970 Amendments may not be retained beyond December 31, 1980, without Board approval.

posed activities may be encompassed within the language of the provision. In addition, it appears that the provision of such services by a banking organization may be consistent with factors considered by the Board under its Regulation BB (12 C.F.R. § 228.7) in assessing a State member bank's record of performance under the Community Reinvestment Act (12 U.S.C. § 2901 *et seq.*). Therefore, regardless of whether these activities currently are specifically authorized, the Board believes it is reasonable to secure comments on whether these activities should be permissible for bank holding companies.

Under guidelines established by a federal circuit court,<sup>2</sup> an activity may be found to be closely related to banking if it is demonstrated (1) that banks generally have in fact provided the proposed service; or (2) that 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) that banks generally provide services that are so integrally related to the proposed service as to require their provision in a specialized form.<sup>3</sup> The Board has previously found the *National Courier* guidelines useful in determining whether there is a reasonable basis for an applicant's opinion that a proposed new nonbanking activity is closely related to banking.<sup>4</sup>

With respect to the activity of performing appraisals of real estate other than single-family residences (RERC's activity (7)), the Board finds that the record of this application currently contains little evidence, other than Applicant's unsubstantiated assertions, that this activity meets the guidelines established by the Board and the courts. There is evidence to indicate that banks perform real estate appraisals for internal use, but this is not a basis upon which an activity may be found to be closely related to banking; otherwise, any administrative support service could be found to be

<sup>2</sup> *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975) (hereinafter referred to as "*National Courier*").

<sup>3</sup> These guidelines are cited, for example, in *NCNB Corporation v. Board of Governors of the Federal Reserve System*, 599 F.2d 609 (4th Cir. 1979); *Association of Bank Travel Bureaus, Inc. v. Board of Governors of the Federal Reserve System*, 568 F.2d 549, 551 (7th Cir. 1978); *Alabama Association of Insurance Agents v. Board of Governors of the Federal Reserve System*, 553 F.2d 224, 241 (5th Cir. 1976), *rehearing denied* 558 F.2d 729 (1977), *cert. denied* 435 U.S. 904 (1978).

<sup>4</sup> *NCNB Corporation* (Superior Insurance Company and Superior Claim Service), 64 Federal Reserve Bulletin 506, 507 (1978); *aff'd sub nom. NCNB Corporation v. Board of Governors of the Federal Reserve System*, 599 F.2d 609 (4th Cir. 1979).

closely related to banking. Nevertheless, since the Board is inviting comment on other aspects of the proposal, it appears that it would be desirable to also secure comments as to whether this activity is "so closely related to banking or managing or controlling banks as to be a proper incident thereto." It is noted that appraisals accounted for a larger percentage of RERC's sales in 1979 than any other single activity. Under the Board's Regulation Y, the Board's decision to publish notice of a proposed new activity does not obligate the Board to finally determine that the activity is closely related to banking or that the activity is permissible for bank holding companies.

Interested persons may express their views on the question of whether each of the above activities is closely related to banking or managing or controlling banks. Comments concerning this question should address the *National Courier* guidelines.

Some of RERC's activities proposed by First Chicago to be continued beyond December 31, 1980, have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b). These activities are: (1) providing financial advice to State and local governments; (2) providing portfolio investment advice; (3) providing branch location, financial feasibility, and specialized market studies for non-affiliated banks; and (4) providing general economic information and advice, general economic forecasting services, and industry studies. Interested persons may also express their views on the question of whether the continued performance by Applicant of these activities, as well as those activities proposed for rulemaking discussed above, 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."

A request for a hearing on either question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

## FIRST CHICAGO CORPORATION

### Order Concerning Retention of Real Estate Research Corporation

First Chicago Corporation, Chicago, Illinois, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act (12 U.S.C. § 1843 (c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 C.F.R. § 225.4(b)(2)), to retain the shares of its subsidiary, Real Estate Research Corporation ("RERC"), Chicago, Illinois. RERC engages in certain investment adviser and management consulting activities that have previously been determined by the

Board to be permissible for bank holding companies in section 225.4(a) of Regulation Y (12 C.F.R. § 225.4(a)). RERC also provides other advisory services and real estate appraisal services that have not previously been determined to be closely related to banking. Applicant has proposed that notice of opportunity for hearing regarding all of RERC's activities be published in the *Federal Register*.

Section 225.4(a) of Regulation Y provides that a bank holding company may file an application to engage

in activities, other than those determined to be permissible for bank holding companies, if it is of the opinion that the proposed activity in the circumstances surrounding a particular case is closely related to banking or managing or controlling banks. The regulation further provides that the Board will publish in the *Federal Register* a notice of opportunity for hearing regarding the proposed activity only if it believes that there is a reasonable basis for the bank holding company's opinion.

Applicant acquired RERC in June 1970, and has been engaged since that time<sup>1</sup> in the following activities: (1) providing financial advice to State and local governments; (2) providing portfolio investment advice; (3) providing branch location, financial feasibility, and specialized market studies for nonaffiliated banks; (4) providing general economic information and advice, general economic statistical forecasting services, and industry studies; (5) advising State and local governments about methods available to finance real estate development projects; (6) evaluating projected income to determine for State and local governments whether debt resulting from proposed development projects can be adequately serviced; (7) performing appraisals of all types of real estate, other than single-family residences; (8) providing energy conservation advice with respect to the financial feasibility and market acceptance of various energy alternatives for real estate; (9) providing advice with respect to the financial and market feasibility and scope of real estate development projects; (10) providing advice as to the financial consequences of pursuing different real estate strategies; (11) providing advice as to the optimum use of a parcel of real estate; (12) providing advice as to the suitability of a particular location, or the optimum location, for a facility in terms of economic return, transportation, marketability or other factors; and (13) writing reports for governmental agencies evaluating specific development projects or recommending or evaluating development options for a community. Activities (1) through (4) have previously been found by the Board to be closely related to banking, and therefore, notice of opportunity for hearing regarding them may be published in the *Federal Register*.

A federal circuit court has set forth guidelines for determining whether an activity is closely related to banking,<sup>2</sup> and the Board has previously found these guidelines useful in determining whether there is a reasonable basis for an applicant's opinion that a proposed new nonbanking activity is closely related to banking.<sup>3</sup> Under these guidelines, an activity may be found to be closely related to banking if it is demonstrated (1) that banks generally have in fact provided the proposed service; or (2) that 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) that banks gen-

erally provide services that are so integrally related to the proposed service as to require their provision in a specialized form.<sup>4</sup>

The Board finds no evidence to support a determination that there is a reasonable basis for Applicant's opinion that activities (8) through (13) are closely related to banking. Applicant asserts that banks perform these services, or functionally similar or integrally related services, for banks' internal use. Services performed for internal use only, however, do not satisfy the *National Courier* guidelines; otherwise, any administrative support service could be found to be closely related to banking. In fact, the Board views activities (8) through (13) as "management consulting", as defined in footnote 2 to section 225.4(a)(5) of Regulation Y (12 C.F.R. § 225.4(a)(5 n.2)).<sup>5</sup> The Board has determined that providing management consulting to nonbanking companies is not closely related to banking,<sup>6</sup> and Applicant has not provided any evidence to indicate that this determination should be reconsidered.

On the basis of information submitted by Applicant, the Board concludes that Applicant has not demonstrated that there is a reasonable basis for its opinion that proposed activities (8) through (13) meet any of the three criteria recognized by the courts to determine whether these activities are closely related to banking or managing or controlling banks.

Based upon the foregoing and the other facts of record, the Board concludes that in the circumstances presented in this case there is no reasonable basis for believing that proposed activities (8) through (13) are closely related to banking or managing or controlling banks. Therefore, a *Federal Register* notice of opportunity for hearing in this matter should not and will not be published with respect to these activities.

The Board has determined that a *Federal Register* notice of opportunity for hearing should be published with respect to proposed activities (5), (6), and (7), as well as to those activities of RERC that have been found to be within the scope of activities specifically listed in section 225.4(a) of Regulation Y as being permissible for bank holding companies. The reasons for this determination are set forth in the notice of proposed rule making to be published in the *Federal Register*.

By order of the Board of Governors,<sup>7</sup> effective June 26, 1980.

<sup>4</sup> These guidelines are cited, for example, in *NCNB*, at 613; *Association of Bank Travel Bureaus, Inc. v. Board of Governors of the Federal Reserve System*, 568 F.2d 549, 551 (7th Cir. 1978); *Alabama Association of Insurance Agents v. Board of Governors of the Federal Reserve System*, 533 F.2d 224, 241 (5th Cir. 1976), *rehearing denied* 558 F.2d 729 (1977), *cert. denied* 435 U.S. 904 (1978).

<sup>5</sup> The definition of "management consulting" includes the provision of analysis or advice as to the following: marketing operations, such as market testing and development; planning operations, such as demand and cost projections, plant location, program planning and determination of long-term and short-term goals; internal operations, such as budgeting systems, budget control, and efficiency evaluation; and research operations, such as product development, basic research, and product design and innovations. 12 C.F.R. § 225.4(a)(5 n.2).

<sup>6</sup> *First Commerce Corporation* (W. R. Smolkin & Associates, Inc.), 58 Federal Reserve Bulletin 674 (1972); *Marine Midland Banks, Inc.* (Carter H. Golembe Associates, Inc.), 58 Federal Reserve Bulletin 676 (1972): The Board, however, has found that, subject to certain restrictions, management consulting may be provided to nonaffiliated banks, 12 C.F.R. § 225.4(a)(12).

<sup>7</sup> Voting for this action: Vice Chairman Schultz and Governors Partee, Teeters, Rice and Gramley. Absent and not voting: Chairman Volcker and Governor Wallich.

<sup>1</sup> Section 4 of the Act provides, *inter alia*, that nonbanking activities acquired between June 30, 1968, and December 31, 1970, by a company which became a bank holding company as a result of the 1970 Amendments may not be retained beyond December 31, 1980, without Board approval.

<sup>2</sup> *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975) (hereinafter referred to as "*National Courier*").

<sup>3</sup> *NCNB Corporation* (Superior Insurance Company and Superior Claim Service), 64 Federal Reserve Bulletin 506, 507 (1978); *aff'd sub nom. NCNB Corporation v. Board of Governors of the Federal Reserve System*, 599 F.2d 609 (4th Cir. 1979) (hereinafter referred to as "*NCNB*").