

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 9120]
August 4, 1981

**REGULATION Y — BANK HOLDING COMPANIES
— Amendments Regarding Insurance Agency Activities
— Proposal Regarding Data Processing and EFT Activities**

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

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has amended its Regulation Y (Bank Holding Companies) concerning the sale as agent of certain kinds of insurance.

The Board acted to conform its regulation to court decisions. The Board deleted the authority of bank holding companies to act as an agent for the sale of insurance sold as a matter of convenience to the public. In addition, the Board removed the authority under section 4(c)(8) of the Bank Holding Company Act for bank holding companies to act as agent for the sale of insurance for themselves or for their subsidiaries. The Board determined this latter activity to be permissible under other provisions of the Bank Holding Company Act.

Subject to approval of specific proposals, it remains permissible for bank holding companies to act as agent or broker for the sale of insurance (including property and casualty insurance) directly related to an extension of credit, or the provision of financial services, by a bank or a bank-related firm.

Enclosed is an excerpt from the *Federal Register* of July 28, 1981, containing the text of the amendments, effective September 1, 1981. Questions may be directed to our Domestic Banking Applications Department (Tel. No. 212-791-5861).

The Board has also invited comment on a proposed rule regarding data processing and electronic funds transfer activities of bank holding companies. An excerpt from the *Federal Register* of July 23, 1981, containing the text of the proposal, is printed on the reverse side of this circular. Comments thereon should be submitted by October 1, 1981, and may be sent to our Domestic Banking Applications Department.

ANTHONY M. SOLOMON,
President.

(OVER)

FEDERAL RESERVE SYSTEM
12 CFR Part 225
[Regulation Y]

**Bank Holding Companies and Change
in Bank Control; Data Processing and
Electronic Funds Transfer Activities**

AGENCY: Board of Governors of the
Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: On November 5, 1980, the Board issued an amended Order for Hearing [45 FR 75221 (1980)] regarding an application by Citicorp, New York, New York, to engage in certain data processing activities through a subsidiary to be known as Citishare Corporation. The amended Order reflected an amendment to Citicorp's application involving certain activities related to data processing and transmission, including electronic funds transfer activities, that may not previously have been authorized by Regulation Y. The Board's amended Order and related Federal Register notice announced initiation of rulemaking and set out Citicorp's proposed data processing and transmission activities in detail. Comments are requested concerning the rule proposed by Citicorp that would authorize such activities, for consideration as part of the record of the hearing on Citicorp's proposal.

DATE: Comments must be received by October 1, 1981.

ADDRESS: Comments may be mailed to William W. Wiles, 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 received may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT:

Carl V. Howard, Senior Attorney (202/452-3786), or Michael L. Kadish, Attorney (202/452-3428), Legal Division, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: Under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), a bank holding company or its subsidiaries may engage, with the Board's prior approval, in any activity that the Board has determined "to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." This section authorizes the Board to make the determination of whether an activity is closely related to banking by regulation.

The Administrative Law Judge in the hearing on Citicorp's proposal has ruled that interested persons may, without participating in the adjudicatory aspects of the hearing, express their views on the question of whether the activities covered by the proposed rule are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

Pursuant to its authority under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), the Board

proposes the following amendments to 12 CFR 225.4:

1. Section 225.4(a)(8) would be revised to read as follows:

§ 225.4 Nonbank activities.

(a) * * *

(8)(i) Providing data processing and transmission services, information or facilities⁷ for the internal operations of the holding company and its subsidiaries;

(ii) Providing to others data processing and transmission services, information or facilities, or access to such services, information or facilities, wherein the data to be processed or furnished are financial, banking or economic related;

(iii) Providing by-products of permissible data processing and transmission activities; and

(iv) Providing excess capacity on data processing and transmission equipment and facilities used in connection with activities under (i) and (ii) above, but only to the extent of furnishing the facilities necessary to the utilization of the excess capacity.

* * * * *

2. Footnotes 7, 8, 9, 10, 11, and 12 to 12 CFR 225.4 would be redesignated as footnotes 8, 9, 10, 11, 12, and 13, respectively.

Board of Governors of the Federal Reserve System, July 17, 1981.

William W. Wiles,
Secretary of the Board.

[FR Doc. 81-21597 Filed 7-22-81; 8:45 am]

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⁷ The term "facilities" includes data processing and transmission hardware, software, documentation, and operating personnel.

Board of Governors of the Federal Reserve System

BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

AMENDMENT TO REGULATION Y

(Effective September 1, 1981)

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y; Docket No. R-0050]

Bank Holding Companies; Nonbank Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted certain amendments to its Regulation Y ("Bank Holding Companies") that would limit the insurance agency activities authorized for bank holding companies. The first amendment would delete from the Board's regulations the authority for bank holding companies to act under section 4(c)(8) of the Bank Holding Company Act as agent for the sale of insurance for themselves and their subsidiaries. This amendment reflects a court decision that acting as agent for the sale of insurance for the bank holding company and its nonbanking subsidiaries is not an activity permissible under the Bank Holding Company Act. It also reflects the decision that such activities may be conducted pursuant to other provisions of the Act. The second amendment deletes from the Board's regulations the authority for bank holding companies to act as agent for insurance sold as a matter of convenience to the public.

These amendments are required in order to conform the Board's regulations to an opinion of the United States Court of Appeals for the Fifth Circuit. That opinion found that the sale by bank holding companies of certain of the types of insurance described in connection with the first amendment was not an activity in which bank holding companies legally may engage pursuant to section 225.4(a)(9)(i) of the Board's Regulation Y. Further, the Court's opinion found that the part of the Board's regulation relating to the sale of "convenience" insurance also authorized the sale of insurance beyond the scope of the provisions of section

4(c)(8) of the Bank Holding Company Act and therefore impermissible.

EFFECTIVE DATE: September 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Deputy General Counsel (202/452-3274) or 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 Board previously published in the *Federal Register* (43 FR 14970) a notice of proposed rulemaking to amend section 225.4(a)(9) of Regulation Y (12 CFR 225.4(a)(9)). That section of Regulation Y enumerates those insurance agency activities that the Board has found to be so "closely related" to banking as to be a proper incident thereto under section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8) ("Act") and, therefore, permissible nonbanking activities for bank holding companies.

The United States Court of Appeals for the Fifth Circuit, in *Alabama Association of Insurance Agents v. Board of Governors of the Federal Reserve System*, 533 F.2d 224 (5th Cir. 1976); rehearing denied, 558 F.2d 729 (5th Cir. 1977); cert. denied, 435 U.S. 904 (1978), determined that certain portions of section 225.4(a)(9) of Regulation Y authorized insurance agency activities for bank holding companies that were not "closely related" to banking within the meaning of section 4(c)(8) of the Act. In particular, the Court found that to the extent § 225.4(a)(9)(i) of Regulation Y authorized bank holding companies to act as agent for the sale of insurance for themselves and their nonbanking subsidiaries, that section permitted activities not "closely related" to banking. Thus, the Court invalidated § 225.4(a)(9)(i) of Regulation Y as to those activities. However, the Board has found that the authority for bank holding companies to engage in these activities as well as the activity of acting as agent for the sale of insurance to the banking subsidiaries of bank

holding companies is contained in sections 4(c)(1)(C) and 4(a)(2)(A) of the Act. Accordingly, § 225.4(a)(9)(i) of Regulation Y, which originally was proposed to be revised in part, is deleted entirely by the final amendment adopted by the Board. Additionally, the Court found that § 225.4(a)(9)(ii)(c), which authorized bank holding companies, under certain circumstances, to sell insurance to meet the convenience of the public, also permitted nonbanking activities not "closely related" to banking. The Court also struck down this portion of the Board's Regulation Y. Finally, the Court found that § 225.4(a)(9)(iii) of Regulation Y, which authorized bank holding companies to sell insurance in communities of a population not exceeding 5,000 or having inadequate insurance agency facilities, was phrased in such a way as to permit nonbanking activities that are not "closely related" to banking as well as those that are "closely related." The Court remanded to the Board this section for further consideration, which was done on October 31, 1979. See 44 FR 6505 (1979). In order to implement the Court's decision that § 225.4(a)(9)(i) and (ii)(c) of Regulation Y were invalid, the Board issued the rulemaking proposal cited above. That part of the proposed rulemaking relating to § 225.4(a)(9)(iii) has been mooted by intervening Board action, as described above.

The Board now is adopting in final form substantially as proposed, amendments to § 225.4(a)(9) of Regulation Y that would limit, in conformance with the Court's opinion, the insurance agency activities of bank holding companies. In connection with this action, the Board has considered the comments received in response to its rulemaking proposal. Several commenters stated that the Board should not eliminate from the regulation the authority for bank holding companies to sell certain of the kinds of insurance proposed to be deleted, such as insurance for the bank holding company, its nonbanking subsidiaries, convenience insurance and insurance in

For this Regulation to be complete, retain:

- 1) Regulation Y pamphlet, as amended effective April 5, 1978.
- 2) Rescission of part of Regulation Y, effective June 14, 1979
- 3) Amendments effective January 1, 1979, March 10, 1979, April 2, 1979, October 24, 1979, December 5, 1979, December 31, 1980, January 3, 1981, and January 7, 1981.
- 4) This slip sheet..

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towns of population of less than 5,000. As those parts of Regulation Y authorizing the sale of the first two kinds of insurance specially were invalidated by the Court, the Board has concluded that it must delete from the regulation the authority for bank holding companies to sell such insurance. Further, as described above, the Board has adopted in a separate rulemaking proceeding a rule pertaining to the sale of insurance in towns of less than 5,000 population and that action moots the related portion of the proposal. Other commenters recommended that, in addition to the proposed deletions of authority to sell insurance, the Board should delete the authority for bank holding companies to sell property and casualty insurance. The Board believes such action would be inconsistent with the Court's opinion. Moreover, this recommendation is beyond the scope of this proposal. Finally, many commenters suggested that the Board add to the regulation the authority for bank holding companies to renew insurance sold by a bank holding company in connection with an extension of credit or provision of other financial service. This suggestion, too, is beyond the scope of the proposal. However, the Board will address this suggestion in the near future.

Some commenters stated that amended § 225.4(a)(9) of Regulation Y would be inconsistent with the Board's published interpretations relating to the sale of insurance by bank holding companies. The Board agrees that its action amending § 225.4(a)(9) of Regulation Y would require similar revision of the Board's interpretations. Accordingly, the Board has approved revisions of 12 CFR 225.128 in order to make that interpretation consistent with the Board's regulation.

Several commenters objected that the proposed regulation was too generalized and suggested that it be expanded to enumerate the specific lines of insurance authorized, and that the term "financial services" in § 225.4(a)(9)(ii) of Regulation Y be defined. The Board has rejected these suggestions because the term financial service is defined in 12 CFR 225.128 of the Board's published interpretations. Moreover, it believes that the general language of the regulation was approved by the Court and that good administrative practice dictates that the application of the law to all possible factual situations should not be attempted, and cannot be achieved, by general regulation. In this regard, the public is advised that the Board and its staff will provide, upon request, interpretations of the law and the Board's regulations.

Finally, various comments were received relating to the provisions of § 225.4(a)(9)(ii) (a) and (b) of the regulation. Inasmuch as the sole purpose

of the proposed amendments was to revise § 225.4(a)(9)(i) and delete § 225.4(a)(9)(ii)(c), as described above, the Board has determined that such comments are beyond the scope of the proposal.

(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).

Effective as noted above, § 225.4(a)(9) of the Board's Regulation Y (12 CFR 225.4(a)(9)) is revised to read as follows:

§ 225.4 Nonbanking activities

(a) * * *

(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 that (A) is directly related to an extension of credit by a bank or 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.

(ii) 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.

Board of Governors of the Federal Reserve System, July 15, 1981.

William W. Wiles,
Secretary of the Board.

[FR Doc. 81-21491 Filed 7-27-81; 8:45 am]

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12 CFR Part 225

Bank Holding Companies; Nonbank Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretations.

SUMMARY: The Board has revised its interpretations of Regulation Y ("Bank Holding Companies") relating to the sale of insurance by bank holding companies. These revisions are required to conform the interpretations to recently adopted amendments to Regulation Y, which was partially invalidated by a federal court.

EFFECTIVE DATE: September 1, 1981.

FOR FURTHER INFORMATION CONTACT: Robert E. Mannion, Deputy General Counsel (202/452-2374) or Richard M. Whiting, Senior Attorney (202/452-3779), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: As a result of a decision by the U.S. Court of Appeals for the Fifth Circuit, (*Alabama Association of Insurance Agents, Inc. v. Board of Governors of the Federal Reserve System*, 533 F.2d 224 (5th Cir. 1976); rehearing denied, 558 F.2d 729 (5th Cir. 1977); cert. denied, 435 U.S. 904 (1978)), the Board's regulation relating to permissible insurance agency activities in which bank holding companies may engage (12 CFR 225.4(a)(9)), pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1843(c)(8)) was upheld in part, invalidated in part, and remanded in part. To conform Regulation Y with the decision of the U.S. Court of Appeals for the Fifth Circuit, the Board has amended those portions of its regulation that were either revised or invalidated by the Court. In particular, the Board has eliminated § 225.4(a)(9)(i) of Regulation Y to delete the authority for bank holding companies to sell insurance to themselves, and their subsidiaries pursuant to section 4(c)(8) of the Act. Instead, bank holding companies may sell such insurance pursuant to the provisions of sections 4(a)(2)(A) and 4(c)(1)(C) of the Act. In addition, the Board has deleted § 225.4(a)(9)(ii)(c) of Regulation Y, which authorized bank holding companies to sell insurance as a matter of convenience to the public.

These amendments to Regulation Y require certain amendments to the Board's insurance agency interpretation to make it consistent with the Board's amended regulation. Also, certain portions of the interpretation have been redesignated.

§ 225.128 [Amended]

In accordance with the Board's amendments to § 225.4(a)(9)(i) and (ii)(c) of Regulation Y, the following changes have been made to the Board's insurance agency interpretation, 12 CFR 225.128:

(1) Paragraph (b) of § 225.128 has been removed.

(2) Present paragraph (c) has been redesignated paragraph (b) and the

reference in the first sentence of that paragraph to Regulation Y should be revised to refer to § 225.4(a)(9)(i)(a).

(3) Present paragraph (c)(3) is removed and present paragraph (c)(4) is redesignated paragraph (c)(3).

(4) Present paragraph (d) is redesignated paragraph (c) and the reference in the first sentence of that paragraph to Regulation Y should be revised to refer to § 225.4(a)(9)(i)(b).

(5) Present paragraph (e) is removed.

Board of Governors of the Federal Reserve System, July 15, 1981.

William W. Wiles,
Secretary of the Board.

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