

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 9180]
[November 4, 1981]

PROPOSED AMENDMENT TO REGULATION Y

Management Consulting Advice to Nonbank Depository Institutions

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

The following statement was issued October 29 by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board today asked for public comment on a proposal to add the provision of management consulting advice to unaffiliated nonbank depository institutions to the activities permissible for bank holding companies.

The Board requested comment by December 30, 1981.

Under the proposal management consulting advice could be offered to institutions such as savings and loan associations, mutual savings banks and other types of depository institutions that are not commercial banks. At present, the Board's rules permit bank holding companies to provide management consulting advice only to banks.

The Board's proposal was made in connection with an application by BankAmerica Corporation to engage in the activity proposed.

At the same time, the Board proposed to permit management interlocks, under certain conditions, between bank holding companies and depository institutions to which they provide management consulting.

Printed on the following pages is the text of the Board's proposal. Comments thereon should be submitted by December 30, 1981, and may be sent to our Domestic Banking Applications Department.

ANTHONY M. SOLOMON,
President.

FEDERAL RESERVE SYSTEM

[12 CFR PART 225]

Regulation Y

[Docket No. R-0369]

BANK HOLDING COMPANY ACTIVITIES

Notice of Proposed Rulemaking
and Application by BankAmerica Corporation
to Provide Management Consulting Services to
Nonbank Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed Rulemaking

SUMMARY: The Board of Governors of the Federal Reserve System is proposing an amendment to its Regulation Y in connection with an application by BankAmerica Corporation, San Francisco, California, to engage in offering management consulting advice to unaffiliated nonbank depository institutions. These institutions would include savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies. The proposed activities would include, but not be limited to, the selling to non-affiliated nonbank depository institutions of services which relate to bank operations and marketing, bank personnel operations, and consumer financial information. The Board also proposes to permit bank holding companies to have management interlocks with depository institutions to which they provide management consulting services if such interlocks would be permissible under exceptions contained in Regulation L that apply to institutions in need of management or operating expertise. Interested persons are invited to submit written data, views, or arguments regarding the proposed amendments for a period of 60 days.

DATE: Comments must be received by December 30, 1981.

ADDRESS: Comments should include a reference to Docket No. R-0369 and should be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or be delivered on weekdays to Room B-2223, 20th and Constitution Avenue, N.W., Washington, D.C., between 8:45 a.m. and 5:15 p.m. Any comments received may be inspected on weekdays in Room B-1122 between 8:45 a.m. and 5:15 p.m. The application by BankAmerica Corporation may be inspected at the offices of the Board or at the Federal Reserve Bank of San Francisco.

FOR FURTHER INFORMATION CONTACT: Michael E. Bleier, Assistant General Counsel, (202) 452-3721, or Melanie L. Fein, Attorney, (202) 452-3594, Legal Division, Board of Governors of the Federal Reserve System.

SUPPLEMENTAL INFORMATION: Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) permits bank holding companies to hold shares of "any company the activities of which the Board, after due notice and opportunity for hearing, determines (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board's Regulation Y specifies activities that it has determined to be closely related to banking and thus permissible for bank holding companies under section 4(c)(8). (12 C.F.R. 225.4(a)). In determining whether a particular activity is a proper incident to banking or managing or controlling banks, the Board is required to 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." The Board considers whether an activity can reasonably be expected to produce public benefits in connection with individual proposals by bank holding companies to engage in the activity.

Section 225.4(a)(12) of Regulation Y permits bank holding companies to provide management consulting services to nonaffiliated banks. The Board has stated in a published interpretation that such activities should be provided "only to an institution that both accepts deposits that the depositor has a legal right to withdraw on demand and engages in the business of making commercial loans." 12 C.F.R. 225.131. The Board regards this interpretation as presently excluding most thrift institutions.

Section 225.4(a) of Regulation Y provides that any bank holding company that is of the opinion that activities other than those included in the list of permissible activities are closely related to banking or managing or controlling banks may file an application to engage in the activity. That section further provides that the Board will publish notice of the application in the Federal Register "if it believes that there is a reasonable basis for the holding company's opinion."

BankAmerica Corporation, San Francisco, California ("BankAmerica"), has proposed to offer management consulting services to nonbank depository institutions. These services would be provided nationwide through BankAmerica's subsidiary, BA Cheque Corporation, San Francisco, California. BankAmerica asserts that the proposed activity is closely related to banking or managing or controlling banks since banks traditionally have provided management consulting services to nonaffiliated banks. BankAmerica also states that banks traditionally have provided specialized services

to nonbank depository institutions. Based on all the facts of record, including the assertions put forth by BankAmerica and in view of the powers of thrift institutions, the Board has concluded that a reasonable basis exists for BankAmerica's opinion that the offering of the proposed activity is "closely related to banking or managing or controlling banks." Accordingly, this notice of BankAmerica's application is being published in the Federal Register.

In conjunction with BankAmerica's application, the Board is considering an amendment to section 225.4(a) of Regulation Y to add the proposed activity to the list of permissible activities for bank holding companies. In connection with this action, the Board also is proposing to amend Regulation Y to permit bank holding companies to have common management officials with depository institutions to which they provide management consulting services if such interlocks would be permissible under exceptions contained in the Board's Regulation L (Management Official Interlocks) that apply to depository institutions in need of management or operating expertise. 12 C.F.R. § 212.4(b). Regulation Y currently provides that bank holding companies may not have officers, directors, or employees in common with banks to which they provide management consulting services. 12 C.F.R. § 225.4(a)(12)(ii). The purpose of this restriction is to guard against potential conflicts of interest. An exception is provided when such interlocking relationships are or would be permitted under the exception contained in Regulation L for banks located in low income areas. This exception reflects a determination that the benefits of providing management consulting services to institutions in need of management expertise outweigh any potential conflicts of interest.

The low income exception was incorporated into Regulation Y at the same time that it was added to Regulation L. Since adoption of this exception, other exceptions have been added to Regulation L. These include exceptions for depository organizations controlled or managed by women or minorities, newly chartered organizations, and organizations facing conditions endangering safety or soundness or disruptive loss of management officials due to the prohibitions in Regulation L. 12 C.F.R. § 212.4(b). The exceptions may be granted by the appropriate federal supervisory agency in individual cases on the basis of a determination that the exception is necessary to provide management or operating expertise to the requesting institution. These Regulation L exceptions have not yet been incorporated into the Regulation Y provision that prohibits interlocks between bank holding companies and client institutions to which they provide management consulting services. The Board is proposing to incorporate them at this time since the public interest they serve in Regulation L would similarly be served by their inclusion in Regulation Y. The proposed amendment in this regard uses the terminology of the Depository Institution Management Interlocks Act of 1978, 12 U.S.C. § 3201 et seq., which refers to inter-

locks by "management officials," instead of the language in section 8 of the Clayton Act, which was superseded by the Interlocks Act, which refers to "officer, director, or employee" interlocks.

Interested persons are invited to comment on whether the proposed new management consulting activity is "closely related to banking or managing or controlling banks" and whether consummation of BankAmerica's proposal to engage in the activity 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." Comment also is requested on the proposal to include the Regulation L exceptions in the Regulation Y restriction regarding interlocks between consulting companies and their client depository institutions. Any request for a hearing on these questions must be accompanied by a statement of the reasons why 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.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354); 5 U.S.C. 601 et seq.), the Board of Governors of the Federal Reserve System certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The proposed amendment would liberalize the existing regulations and does not have any particular effect on small entities that would be subject thereto.

Accordingly, pursuant to its authority under section 5(b) of the Bank Holding Company Act, 12 U.S.C. § 1844(b), the Board of Governors of the Federal Reserve System proposes to amend 12 C.F.R. Part 225, as follows:

12 C.F.R. Part 225 is proposed to be amended as follows:

1. The authority citation for Part 225 reads as follows:

Authority. Sec. 5, 70 Stat. 137; 12 U.S.C. 1844, unless otherwise noted.

2. Section 225.4 is amended by revising paragraph (a) (12) to read as follows:

225.4--Nonbanking Activities

(a) * * *

(12) providing management consulting advice^{9/} to nonaffiliated bank and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies, 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 institution; (ii) no management official, as defined in 12 CFR 212.2(h), of the bank holding company or any of its subsidiaries serves as a management official of the client institution except where such interlocking relationships are or would be permitted under 12 CFR 212.4(b); (iii) the advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client institution at any depository institution subsidiary of the bank holding company; and (iv) disclosure is made to each potential client institution of (a) the names of all depository institutions which are affiliates of the consulting company, and (b) the names of all existing client institutions^{10/} located in the same market area(s) as the client institution.

Board of Governors of the Federal Reserve System, effective October 28, 1981.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board

[SEAL]

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

10/ Applicants to engage de novo in providing management consulting advice to nonaffiliated bank and nonbank depository institutions should be filed in accordance with the procedures of § 225.4(b)(2) rather than § 225.4(b)(1) of Regulation Y.

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