

FEDERAL RESERVE BANK  
OF NEW YORK

[ Circular No. 9460 ]  
[ March 3, 1983 ]

REGULATION Y  
Comment Invited on Proposal to Permit Discount Securities Brokerage  
and Securities Credit Lending

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

The following statement has been issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has proposed for comment an amendment to Regulation Y, on bank holding companies, to add discount securities brokerage and securities credit lending to the list of nonbanking activities permissible for bank holding companies.

The Board asked for comment by April 8, 1983.

In January, the Board approved the application of BankAmerica Corporation to acquire The Charles Schwab Corporation and thereby engage in discount securities brokerage and securities credit lending activities. These activities have not yet been approved for all bank holding companies. In light of the extensive record developed in the Schwab application, the Board has asked whether these activities should be added to the list of permissible nonbanking activities in Regulation Y.

Discount securities brokerage in the context of the proposal means buying and selling securities solely as agent for the account of customers; it specifically excludes securities underwriting activities and the provision of investment advice or research services. Securities credit lending means extending credit for the purchase or carrying of securities by nonbank subsidiaries of bank holding companies pursuant to the Board's Regulation T — Credit by Brokers and Dealers.

Printed below is the text of the proposal, which has been reprinted from the *Federal Register* of February 24, 1983. Comments thereon should be submitted by April 8, 1983, and may be sent to our Domestic Banking Applications Department.

ANTHONY M. SOLOMON,  
*President.*

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**FEDERAL RESERVE SYSTEM**

**12 CFR Part 225**

[Docket No. R-0455]

**Regulations Y; Bank Holding  
Companies and Change in Bank  
Control; Nonbanking Activity; Discount  
Securities Brokerage and Securities  
Credit Lending**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Board of Governors  
recently approved by order an  
application by a major bank holding  
company filed pursuant to section 4(c)(8)

of the Bank Holding Company Act to acquire a company engaged in providing certain brokerage and securities credit or "margin" lending services. In response to public notice of that application, several commentators suggested that those nonbanking activities be added to the list of nonbank activities in Regulation Y, 12 CFR 224 *et seq.*, that are generally permissible for bank holding companies. Accordingly, at this time, the Board has decided to consider amending § 225.4(a) of Regulation Y to add these activities to the list of permissible activities for bank holding companies.

**DATE:** Comments must be received by  
April 8, 1983.

**ADDRESS:** Comments, which should refer to Docket No. R-0455, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room B-1112, 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:**  
Richard M. Ashton, Assistant General  
Counsel, 202/452-3750, or Richard M.  
Whiting, Senior Attorney, 202/452-3779,  
Legal Division, Board of Governors of  
the Federal Reserve System.

(OVER)

**SUPPLEMENTARY INFORMATION:** (1) *Proposed Rulemaking*, Section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8), states that bank holding companies lawfully may engage in those activities the Board has "determined (by order or regulation) to be so closely related to banking or managing and controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). Under proposed general guidelines provided in a federal circuit court opinion, a nonbanking activity may be regarded as closely related to banking if it meets one of the following criteria: (a) Banks generally have in fact provided the proposed service; (b) banks generally provide services that are operationally or functionally so similar to the proposed service as to equip them particularly well to provide the proposed service; or (c) banks generally provide services that are so integrally related to the proposed service as to require their provision in a specialized form. *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F. 2d 1229 (D.C. Cir. 1975). The Board has found such guidelines useful in considering whether or not a proposed nonbanking activity is closely related to banking. In addition, the Board may consider other factors in deciding what activities are closely related to banking. *Alabama Association of Insurance Agents v. Board of Governors*, 533 F. 2d 224, 241 (5th Cir. 1976).

As referenced above, effective January 7, 1983, the Board of Governors approved the application filed pursuant to section 4(c)(8) of the Bank Holding Company Act by BankAmerica Corporation, San Francisco, California ("BAC"), a registered bank holding company, to acquire the Charles Schwab Corporation and thereby engage in certain securities brokerage and margin lending activities pursuant to Regulation T. 69 Federal Reserve Bulletin 105 (1983). In its order approving BAC's application, the Board found that BAC's proposed discount securities brokerage and margin activities were closely related to banking. BAC also sought to engage in certain nonbank activities that it believed were "incidental" to the primary activities of securities brokerage and securities credit lending. Those activities were the provision of custodial services and the provision of investment alternatives for funds awaiting investment in securities. Particularly, these latter services include the offering to securities customers IRAs, sweep arrangements, and the payment of interest on net free balances awaiting investment, particularly through an account that combines payment of interest with customer access to such balances through a debit

card and checking account with an unaffiliated bank.

In its order approving the BAC application, the Board relied upon record evidence that banks currently offer certain types of securities brokerage services. For example, banks have offered brokerage services in connection with servicing custodial accounts, dividend reinvestment plans, voluntary investment plans, employee stock purchase plans, automatic investment plans, customer transaction services and bank trust and advisory accounts. The extent and nature of these bank brokerage activities has been recognized and documented by the SEC.<sup>1</sup> In addition, national banks, the Board noted, are expressly authorized by statute (*i.e.*, 12 U.S.C. 27(7)) to purchase and sell securities without recourse and for the account of customers. Moreover, the Board found that the use of sophisticated techniques, resources, and personnel by banks to execute the purchase or sale of securities for the account of customers is so widespread as to justify a finding that banks generally provide securities brokerage services that equip them particularly well to engage in the proposed brokerage activities. Finally, the Board determined that the proposed "incidental" activities were permissible and could legally be conducted by BAC in connection with the proposed securities brokerage and securities credit lending activities.

Several commentators on BAC's application to engage in discount securities brokerage and margin lending activities suggested that these activities be added to the list of nonbank activities generally permissible for all bank holding companies. Accordingly, the Board now solicits comment as to whether the proposed activities of discount securities brokerage and securities credit lending should be added to the list of permissible nonbank activities in § 225.4(a) of Regulation Y. In this context, securities brokerage means buying and selling securities solely as agent for the account of customers; it specifically excludes securities underwriting activities and the provision of investment advice or research services. Securities credit or margin lending means extending credit for the purchase or carrying of securities by nonbank subsidiaries of bank holding companies pursuant to the Board's Regulation T, 12 CFR Part 220.

(2) *Submission of Comments.* Interested persons may express their views on the question whether the proposed activities should be added to the list in Regulation Y of nonbanking activities that the Board has determined

<sup>1</sup> Securities and Exchange Commission, Final Report on Bank Securities Activities (1977).

to be so "closely related to banking or managing or controlling banks as to be a proper incident thereto" within the meaning of section 4(c)(8) of the Bank Holding Company Act and therefore generally permissible nonbanking activities for all bank holding companies. Any request for a hearing on this matter should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

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 any amendment that might be adopted as a result of action on this matter, will not have 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 would not have any particular effect on small entities that would be subject thereto.

#### List of Subjects in 12 CFR Part 225

Banks, banking, Holding companies, Securities, Reporting and recordkeeping requirements.

*Authority.* Accordingly, pursuant to its authority under section 5(b) of the Bank Holding Company Act, 12 U.S.C. 1844(b), and Sec. 5, 70 Stat. 137; 12 U.S.C. 1844, unless otherwise noted. The Board of Governors of the Federal Reserve System proposes to amend 12 CFR Part 225, as follows:

#### PART 225—[AMENDED]

1. Section 225.4 is amended by adding paragraph (a)(15) to read as follows:

#### § 225.4 Nonbanking activities.

(a) \* \* \*

(15) providing certain securities brokerage services and security credit lending, *provided that* (i) the brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include the conduct of securities underwriting or the provision of investment advice or research services, and (ii) the securities credit lending is conducted by nonbank subsidiaries of bank holding companies pursuant to the Board's Regulation T, 12 CFR § 220.

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By order of the Board of Governors of the Federal Reserve System, February 17, 1983.

James McAfee,  
Associate Secretary of the Board.

[FR Doc. 83-4667 Filed 2-23-83; 8:45 am]