Board of Governors of the Federal Reserve System

AT 9671(a)

Regulation Y
Bank Holding Companies and Change in Bank Control

12 CFR 225; as revised effective February 3, 1984

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

February 1984

Contents

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12 CFR 225; as revised effective February 3, 1984

SUBPART A—GENERAL PROVISIONS

SECTION 225.1—Authority, Purpose, and Scope

(a) *Authority.* This part* (Regulation Y) is issued by the Board of Governors of the Federal Reserve System ("Board") under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 USC 1844(b)) ("BHC Act"); sections 8 and 13(a) of the International Banking Act of 1978 (12 USC 3106 and 3108); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 USC 1817(j)(13)) ("Bank Control Act"); section 8(b) of the Federal Deposit Insurance Act (12 USC 1818(b)); and the International Lending Supervision Act of 1983 (Pub. L. 98-181, title IX). The BHC Act is codified at 12 USC 1841, et seq.

(b) *Purpose.* The principal purposes of this part are to regulate the acquisition of control of banks by companies and individuals, to define and regulate the nonbanking activities in which bank holding companies and foreign banking organizations with United States operations may engage, and to set forth the procedures for securing approval for such transactions and activities.

(c) *Scope.* (1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B governs acquisitions of bank or bank holding company securities and assets by bank holding companies or by any company that will become a bank holding company as a result of the acquisition.

(3) Subpart C defines and regulates the nonbanking activities in which bank holding companies and foreign banking organizations may engage directly or through a subsidiary. In addition, certain nonbanking activities conducted by foreign banking organizations and certain foreign activities conducted by bank holding companies are governed by the Board's Regulation K (12 CFR 211, International Banking Operations).

(4) Subpart D specifies situations in which a company is presumed to control voting securities or to have the power to exercise a controlling influence over the management or policies of a bank or other company, sets forth the procedures for making a control determination, and provides rules governing the effectiveness of divestitures by bank holding companies.

(5) Subpart E governs changes in bank control resulting from the acquisition by individuals or companies (other than bank holding companies) of voting securities of a bank holding company or state member bank of the Federal Reserve System.

(6) Appendix A to the regulation contains the Board's capital adequacy guidelines for bank holding companies and for state member banks.

(7) Appendix B to the regulation contains the Board's policy statement for formation of small one-bank holding companies.

SECTION 225.2—Definitions

Except as modified in this section or unless the context otherwise requires, the terms used in this regulation have the same meanings as set forth in the relevant statutes.

(a)(1) "Bank" means any institution organized under the laws of the United States that (i) accepts deposits that the depositor has a legal right to withdraw on demand and (ii) engages in the business of making commercial loans. For the purposes of this definition—

(A) "deposits that the depositor has a legal right to withdraw on demand" (hereinafter "demand deposits") means any deposit with transactional capability that, as a matter of practice,

* Code of Federal Regulations, title 12, chapter II, part 225.

is payable on demand and that is withdrawable by check, draft, negotiable order of withdrawal, or other similar instrument; and

(B) "commercial loans" means any loan other than a loan to an individual for personal, family, household, or charitable purposes, and includes the purchase of retail installment loans or commercial paper, certificates of deposit, bankers acceptances, and similar money market instruments, the extension of broker call loans, the sale of federal funds, and the deposit of interest-bearing funds.

(2) "Bank" includes any state-chartered bank or national banking association that—

(i) is owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions, or by a bank holding company owned exclusively by other depository institutions; and

(ii) is organized to engage exclusively in providing services for other depository institutions and their officers, directors, and employees.

(3) "Bank" does not include—

(i) any institution that does not do business in the United States except as an incident to its activities outside the United States;

(ii) any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any institution chartered by the Federal Home Loan Bank Board; or

(iii) "Agreement" or "Edge" corporations operating under sections 25 or 25(a) of the Federal Reserve Act (12 USC 601–604(a), 611–631).

(b)(1) "Bank holding company" means any company (including a bank) that has direct or indirect control of a bank, other than control that results from the ownership or control of—

(i) voting securities held in good faith in a fiduciary capacity (other than as provided in paragraphs (d)(2)(ii) and (iii) of this section) without sole discretionary voting authority, or as otherwise exempted under section 2(a)(5)(A) of the BHC Act;

(ii) voting securities acquired and held only for a reasonable period of time in connection with the underwriting of securities, as provided in section 2(a)(5)(B) of the BHC Act;

(iii) voting rights to voting securities acquired for the sole purpose and in the course of participating in a proxy solicitation, as provided in section 2(a)(5)(C) of the BHC Act;

(iv) voting securities acquired in satisfaction of debts previously contracted in good faith, as provided in section 2(a)(5)(D) of the BHC Act, if the securities are divested within two years of acquisition (or such later period as the Board may permit by order); or

(v) voting securities of certain institutions owned by a thrift institution or a trust company, as provided in sections 2(a)(5)(E) and (F) of the BHC Act.

(2) Except for the purposes of section 225.4(b) of this subpart and subpart E of this regulation or as otherwise provided in this regulation, the term "bank holding company" includes a foreign banking organization. For the purposes of subpart B, the term "bank holding company" includes a foreign banking organization only if it owns or controls a bank in the United States.

(c)(1) "Company" includes any bank, corporation, general or limited partnership, association or similar organization, business trust, or any other trust unless by its terms it must terminate either within 25 years, or within 21 years and 10 months after the death of individuals living on the effective date of the trust.

(2) "Company" does not include any organization, the majority of the voting securities of which are owned by the United States or any state.

(d)(1) "Control" of a bank or other company means (except for the purposes of subpart E):

(i) ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or other company, directly or

indirectly or acting through one or more other persons;

(ii) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the bank or other company;

(iii) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or other company, as determined by the Board after notice and opportunity for hearing in accordance with section 225.31 of subpart D of this regulation; or

(iv) conditioning in any manner the transfer of 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company upon the transfer of 25 percent or more of the outstanding shares of any class of voting securities of another bank or other company.

(2) A bank or other company is deemed to control voting securities or assets owned, controlled, or held, directly or indirectly—

(i) by any subsidiary of the bank or other company;

(ii) in a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the bank or other company or of any of its subsidiaries; or

(iii) in a fiduciary capacity for the benefit of the bank or other company or any of its subsidiaries.

(e) "Foreign banking organization" and "qualifying foreign banking organization" shall have the same meanings as provided in section 211.23 of the Board's Regulation K (12 CFR 211.23).

(f) "Management official" means any officer, director (including honorary or advisory directors), partner, or trustee of a bank or other company, or any employee of the bank or other company with policy-making functions.

(g) "Outstanding shares" means any voting securities, but does not include securities owned by the United States or by a company wholly owned by the United States.

(h) "Person" includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(i) "Principal shareholder" means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(j) "Subsidiary" means a bank or other company that is controlled by another company, and refers to a direct or indirect subsidiary of a bank holding company. An indirect subsidiary is a bank or other company that is controlled by a subsidiary of the bank holding company.

(k) "United States" means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(*l*)(1) "Voting securities" means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder—

(i) to vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) to vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) Preferred shares, limited partnership shares or interests, or similar interests are not "voting securities" if—

(i) any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) the shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) the shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

SECTION 225.3—Administration

(a) *Delegation of authority.* Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation and in the Board's Rules Regarding Delegation of Authority (12 CFR 265) and the Board's Rules of Procedure (12 CFR 262).

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, the appropriate Federal Reserve Bank is as follows:

(1) For a bank holding company (or a company applying to become a bank holding company): the Reserve Bank of the Federal Reserve District in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary banks on the date it became (or will become) a bank holding company;

(2) For a foreign banking organization that has no subsidiary bank and is not subject to paragraph (b)(1) of this section: the Reserve Bank of the Federal Reserve District in which the total assets of the organization's United States branches, agencies, and commercial lending companies are the largest as of the later of January 1, 1980, or the date it becomes a foreign banking organization;

(3) For an individual or company submitting a notice under subpart E of this regulation: the Reserve Bank of the Federal Reserve District in which the banking operations of the bank holding company or state member bank to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

SECTION 225.4—Corporate Practices

(a) *Bank holding company policy and operations.* (1) A bank holding company shall serve as a source of financial and managerial strength to its subsidiary banks and shall not conduct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a bank holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a bank) constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary bank of the bank holding company and is inconsistent with sound banking principles or the purposes of the BHC Act or the Financial Institutions Supervisory Act of 1966, as amended (12 USC 1818(b) et seq.), the Board may require the bank holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 5(e) of the BHC Act.

(b) *Purchase or redemption by a bank holding company of its own securities.*

(1) *Filing notice.* A bank holding company shall give the Board prior written notice before purchasing or redeeming its equity securities, if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.

(2) *Content of notice.* Any notice under this section shall be filed with the appropriate Reserve Bank and shall contain the following information:

(i) the purpose of the transaction, a description of the securities to be purchased

or redeemed, the total number of each class outstanding, the gross consideration to be paid, and the terms of any debt incurred in connection with the transaction;

(ii) a description of all equity securities redeemed within the preceding 12 months, the net consideration paid, and the terms of any debt incurred in connection with those transactions; and

(iii) a current and pro forma consolidated balance sheet if the bank holding company has total assets of over $150 million, or a current and pro forma parent-company-only balance sheet if the bank holding company has total assets of $150 million or less.

(3) *Acting on notice.* Within 30 calendar days of receipt of a notice under this section, the appropriate Reserve Bank shall either approve the transaction proposed in the notice or refer the notice to the Board for decision. If the notice is referred to the Board for decision, the Board shall act on the notice within 60 calendar days after the Reserve Bank receives the notice.

(4) *Factors considered in acting on notice.* The Board may disapprove a proposed purchase or redemption if it finds that the proposal would constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board. In determining whether a proposal constitutes an unsafe or unsound practice, the Board will consider whether the bank holding company's financial condition, after giving effect to the proposed purchase or redemption, meets the financial standards applied by the Board under section 3 of the BHC Act, including the Board's capital adequacy guidelines (appendix A) and the Board's policy statement for formation of small one-bank holding companies (appendix B).

(5) *Disapproval and hearing.* The Board shall notify the bank holding company in writing of the reasons for a decision to disapprove any proposed purchase or redemption. Within 10 calendar days of receipt of a notice of disapproval by the Board, the bank holding company may submit a written request for a hearing. The Board will order a hearing within 10 calendar days of receipt of that request if it finds that material facts are in dispute or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR 263). At the conclusion of the hearing, the Board shall by order approve or disapprove the proposed purchase or redemption on the basis of the record of the hearing.

(c) *Deposit insurance.* Every bank that is a bank holding company or a subsidiary of a bank holding company shall obtain Federal Deposit Insurance and shall remain an "insured bank" as defined in section 3(h) of the Federal Deposit Insurance Act (12 USC 1813(h)).

(d) *Tie-in arrangements.* A bank holding company and any nonbanking subsidiary conducting an activity authorized under section 225.23 of this regulation may not in any manner extend credit, lease or sell property of any kind, provide any service, or fix or vary the consideration for any of these transactions subject to any condition or requirement that, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970 (12 USC 1971, 1972(1)).

(e) *Acting as transfer agent, municipal securities dealer, or clearing agent.* A bank holding company or any nonbanking subsidiary that is a "bank," as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 USC 78c(a)(6)), and that is a transfer agent of securities, a municipal securities dealer, a clearing agency, or a participant in a clearing agency (as those terms are defined in section 3(a) of the Securities Exchange Act (12 USC 78c(a)), shall be subject to sections 208.8(f)–(j) of the Board's Regulation H (12 CFR 208.8(f)–(j)) as if it were a state member bank.

SECTION 225.5—Registration, Reports, and Inspections

(a) *Registration of bank holding companies.*

Each company shall register within 180 days after becoming a bank holding company by furnishing information in the manner and form prescribed by the Board. A company that receives the Board's prior approval under subpart B of this regulation to become a bank holding company may complete this registration requirement through submission of its first annual report to the Board as required by paragraph (b) of this section.

(b) *Reports of bank holding companies.* Each bank holding company shall furnish, in the manner and form prescribed by the Board, an annual report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year during which it remains a bank holding company. Additional information and reports shall be furnished as the Board may require.

(c) *Examinations and inspections.* The Board may examine or inspect any bank holding company and each of its subsidiaries and prepare a report of their operations and activities. With respect to a foreign banking organization, the Board may also examine any branch or agency of a foreign bank in any state of the United States and may examine or inspect each of the organization's subsidiaries in the United States and prepare reports of their operations and activities. The Board will rely as far as possible on the reports of examination made by the primary federal or state supervisor of the subsidiary bank of a bank holding company or of the branch or agency of the foreign bank.

SECTION 225.6—Penalties for Violations

(a) *Criminal and civil penalties.* Section 8 of the BHC Act provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual of the BHC Act or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a bank holding company. Civil money penalty assessments for violations of the BHC Act shall be made in accordance with subpart B of the Board's Rules of Practice for Hearings (12 CFR 263, subpart B). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 USC 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 USC 1818(b) et seq.).

SUBPART B—ACQUISITION OF BANK SECURITIES OR ASSETS

SECTION 225.11—Transactions Requiring Board Approval

The following transactions require an application for the Board's prior approval under section 3 of the BHC Act unless otherwise exempted under section 225.12 of this subpart:

(a) *Formation of bank holding company.* Any action that causes a bank or other company to become a bank holding company.

(b) *Acquisition of subsidiary bank.* Any action that causes a bank to become a subsidiary of a bank holding company.

(c) *Acquisition of control of bank or bank holding company securities.* The acquisition by a bank holding company of direct or indirect ownership or control of any voting securities of a bank or bank holding company, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the bank or bank holding company. An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the bank holding company's proportional share of any class of voting securities.

(d) *Acquisition of bank assets.* The acquisition by a bank holding company or by a subsidiary thereof (other than a bank) of all or substantially all of the assets of a bank.

(e) *Merger of bank holding companies.* The merger or consolidation of bank holding companies, including a merger through the purchase of assets and assumption of liabilities.

SECTION 225.12—Transactions Not Requiring Board Approval

The following transactions do not require the Board's approval under section 225.11 of this subpart:

(a) *Acquisition of securities in fiduciary capacity.* The acquisition by a bank or other company (other than a trust that is a company) of control of voting securities of a bank or bank holding company in good faith in a fiduciary capacity, unless—

(1) the acquiring bank or other company has sole discretionary authority to vote the securities and retains the authority for more than two years; or

(2) the acquisition is for the benefit of the acquiring bank or other company, or its shareholders, employees, or subsidiaries.

(b) *Acquisition of securities in satisfaction of debts previously contracted.* The acquisition by a bank or other company of control of voting securities of a bank or bank holding company in the regular course of securing or collecting a debt previously contracted in good faith, if the acquiring bank or other company divests the securities within two years of acquisition. The Board or Reserve Bank may grant requests for up to three one-year extensions.

(c) *Acquisition of securities by a bank holding company with majority control.* The acquisition by a bank holding company of additional voting securities of a bank or bank holding company if more than 50 percent of the outstanding voting securities of the bank or bank holding company is lawfully controlled by the acquiring bank holding company prior to the acquisition.

(d) *Transactions subject to Bank Merger Act.* The merger or consolidation of a subsidiary bank of a bank holding company with another bank, or the purchase of assets by such a subsidiary bank, or a similar transaction involving subsidiary banks of a bank holding company, if the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 USC 1828(c)). This exception does not include (1) the merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank; and (2) any transaction requiring the Board's prior approval under section 225.11(e) of this subpart. The Board may require an application under this subpart if it determines that the merger or consolidation would have a significant adverse impact on the financial condition of the bank holding company or otherwise requires approval under section 3 of the BHC Act.

(e) *Holding securities in escrow.* The holding of any voting securities of a bank or bank holding company in an escrow arrangement for the benefit of an applicant pending the Board's action on an application for approval of the proposed acquisition, if title to the securities and the voting rights remain with the seller and payment for the securities has not been made to the seller.

SECTION 225.13—Factors Considered in Acting on Bank Applications

(a) *Prohibited anticompetitive transactions.* As specified in sections 3(c)(1) and (2) of the BHC Act, the Board may not approve any application under this subpart if—

(1) the transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in any part of the United States; or

(2) the effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anticompetitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community.

(b) *Other factors.* In deciding applications under this subpart, the Board also considers the following factors with respect to the appli-

cant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank or banks to be acquired:

(1) *Financial condition.* Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.

(2) *Management.* The competence and character of the principals of the applicant and banks or bank holding companies concerned; their record of compliance with laws and regulations; and applicant's record of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) *Convenience and needs of the community.* The convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 (12 USC 2901 et seq.) and regulations issued thereunder, including the Board's Regulation BB (12 CFR 228.)

(c)(1) *Interstate transactions.* The Board may not approve any application under this subpart that would permit—

(i) the formation of a bank holding company that controls more than 5 percent of the outstanding shares of any class of voting securities of two or more banks located in different states; or

(ii) the acquisition by a bank holding company or by any of its subsidiaries of any voting securities of, any interest in, or substantially all of the assets of, an additional bank located in a state other than the state in which the operations of the banking subsidiaries of the bank holding company were principally conducted (as measured by total deposits) on July 1, 1966, or on the date on which the company became a bank holding company, whichever date is later.

(2) *Exceptions.* The prohibitions of this paragraph do not apply if—

(i) the bank is located in a state that by statute expressly authorizes the acquisition of securities of, an interest in, or substantially all of the assets of, a bank within the state by an out-of-state bank holding company; or

(ii) the acquisition involves a closed or failing bank with assets of at least $500,000,000, and has been authorized under section 13(f) of the Federal Deposit Insurance Act (12 USC 1823(f)).

SECTION 225.14—Procedures for Applications, Notices, and Hearings

(a) *Filing application.* An application for the Board's prior approval under this subpart shall be filed with the appropriate Reserve Bank on the designated form and shall comply with section 262.3 of the Rules of Procedure (12 CFR 262.3), which requires the applicant to publish newspaper notice of the application.

(b) *Notice.*

(1) *Notice to primary banking supervisor.* Upon receipt of an application under this subpart, the Reserve Bank shall promptly furnish notice and a copy of the application to the primary banking supervisor of the bank to be acquired. The primary supervisor shall have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(2) *Federal Register notice.* Upon receipt by the Reserve Bank of an application under this section, notice of the application shall be promptly sent to the *Federal Register* for publication. The *Federal Register* notice shall invite comment on the application for a period of no more than 30 days.

(c) *Accepting application for processing.* Within 10 business days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing, request additional information to complete the application, or return the application if it is substantially incomplete. If additional information is requested, the Reserve Bank shall, within 5 business days of receipt of the requested information, either accept the application for processing or return it to the applicant if it is still incomplete. Upon accept-

ing an application, the Reserve Bank shall immediately send copies to the Board.

(d) *Action on applications.*

(1) *Action under delegated authority.* The Reserve Bank shall approve an application under this section within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate. Upon written notice to the applicant, the Reserve Bank may extend the 30-day period for 15 days. If the extension of time is to request necessary additional information, the 15-day period does not commence until after the Reserve Bank receives the requested information.

(2) *Board action.* The Board shall act on an application under this subpart that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and states the reasons for the extension. In no event may the extension exceed the 91-day period provided in paragraph (g) of this section. The Board may request additional information that it believes is necessary for its decision.

(e) *Notice to attorney general.* The Board or Reserve Bank shall immediately notify the attorney general of approval of any application under this section.

(f) *Hearings.* As provided in section 3(b) of the BHC Act, the Board shall order a hearing if it receives from the primary supervisor of the bank to be acquired, within the 30-day period specified in paragraph (b)(1) of this section, a written recommendation of disapproval of an application. The Board may order a formal or informal hearing or other proceeding on the application, as provided in section 262.3(i)(2) of the Board's Rules of Procedure. Any request for a hearing (other than from the primary supervisor) shall comply with section 262.3(e) of the Rules of Procedure (12 CFR 262.3(e)).

(g) *Approval through failure to act.*

(1) *Ninety-one day rule.* An application under this subpart shall be deemed approved if the Board fails to act on the application within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, the Board acts when it issues an order stating that the Board has approved or denied the application, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(2) *Complete record.* For the purpose of computing the commencement of the 91-day period, the record is complete on the latest of—

(i) the date of receipt by the Board of an application that has been accepted by the Reserve Bank;

(ii) the last day provided in any notice for receipt of comments and hearing requests on the application;

(iii) the date of receipt by the Board of the last relevant material regarding the application that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System; or

(iv) the date of completion of any hearing or other proceeding.

(h) *Exceptions to notice and hearing requirements.*

(1) *Probable bank failure.* If the Board finds it must act immediately on an application in order to prevent the probable failure of a bank or bank holding company, the Board may modify or dispense with the notice and hearing requirements provided in this section.

(2) *Emergency.* If the Board finds that, although immediate action on an application is not necessary, an emergency exists requiring expeditious action, the Board shall provide the primary supervisor 10 days to submit its recommendation. The Board may act on such an application without a hearing and may modify or dispense with the other notice and hearing requirements provided in this section.

(i) *Waiting period.* A transaction approved under this subpart shall not be consummated

until 30 days after the date of approval of the application, unless the Board has determined under paragraph (h) of this section that—

(1) the application involves a probable bank failure, in which case the transaction may be consummated immediately upon approval; or

(2) an emergency exists requiring expeditious action, in which case the transaction may be consummated on or after the fifth calendar day following approval.

SUBPART C—NONBANKING ACTIVITIES AND ACQUISITIONS BY BANK HOLDING COMPANIES

SECTION 225.21—Prohibited Nonbanking Activities and Acquisitions; Exempt Bank Holding Companies

(a) *Prohibited nonbanking activities and acquisitions.* Except as provided in section 225.22 of this subpart, a bank holding company or a subsidiary may not engage in, or acquire or control, directly or indirectly, voting securities or assets of a company engaged in, any activity other than—

(1) banking or managing or controlling banks and other subsidiaries authorized under the BHC Act; and

(2) an activity that the Board determines to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, including any incidental activities that are necessary to carry on such an activity, if the bank holding company has obtained the prior approval of the Board for that activity in accordance with and subject to the requirements of this regulation.

(b) *Exempt bank holding companies.* The following bank holding companies are exempt from the provisions of this subpart:

(1) *Family-owned companies.* Any company that is a "company covered in 1970," as defined in section 2(b) of the BHC Act, more than 85 percent of the voting securities of which was collectively owned on June 30, 1968, and continuously thereafter, by members of the same family (or their spouses) who are lineal descendants of common ancestors.

(2) *Labor, agricultural, and horticultural organizations.* Any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code (26 USC 501(c)).

(3) *Companies granted hardship exemption.* Any bank holding company that has controlled only one bank since before July 1, 1968, and that has been granted an exemption by the Board under section 4(d) of the BHC Act, subject to any conditions imposed by the Board.

(4) *Companies granted exemption on other grounds.* Any company that acquired control of a bank before December 10, 1982, without the Board's prior approval under section 3 of the BHC Act, on the basis of a narrow interpretation of the term "demand deposit" or "commercial loan" if the Board has determined that (i) coverage of the company as a bank holding company under this subpart would be unfair or represent an unreasonable hardship; and (ii) exclusion of the company from coverage under this regulation is consistent with the purposes of the BHC Act and section 106 of the Bank Holding Company Act Amendments of 1970 (12 USC 1971, 1972(1)). The provisions of section 225.4 of subpart A of this regulation are not applicable to a company exempt under this paragraph.

SECTION 225.22—Exempt Nonbanking Activities and Acquisitions

(a) *Servicing activities.* A bank holding company may, without the Board's prior approval under this subpart, furnish services to or perform services for, or establish or acquire a company that engages solely in furnishing services to or performing services for—

(1) the bank holding company or its subsidiaries in connection with their activities as authorized by law, including services that are necessary to fulfill commitments

entered into by the subsidiaries with third parties, if the bank holding company or servicing company complies with the Board's published interpretations and does not act as principal in dealing with third parties; and

(2) the internal operations of the bank holding company or its subsidiaries. Services for the internal operations of the bank holding company or its subsidiaries include, but are not limited to—

(i) accounting, auditing, and appraising;

(ii) advertising and public relations;

(iii) data processing and data transmission services, data bases or facilities;

(iv) personnel services;

(v) courier services;

(vi) holding or operating property used wholly or substantially by a subsidiary in its operations or for its future use;

(vii) liquidating property acquired from a subsidiary;

(viii) liquidating property acquired from any sources either prior to May 9, 1956, or the date on which the company became a bank holding company, whichever is later; and

(ix) selling, purchasing, or underwriting insurance such as blanket bond insurance, group insurance for employees, and property and casualty insurance.

(b) *Safe deposit business.* A bank holding company or nonbank subsidiary may, without the Board's prior approval, conduct a safe deposit business, or acquire voting securities of a company that conducts such a business.

(c) *Nonbanking acquisitions not requiring prior Board approval.* The Board's prior approval is not required under this subpart for the following acquisitions:

(1) *DPC acquisitions.* (i) Voting securities or assets, acquired by foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted ("DPC property") in good faith, if the DPC property is divested within two years of acquisition.

(ii) The Board may, upon request, extend this two-year period for up to three additional one-year periods. The Board may permit additional extensions for up to 5 years (for a total of 10 years), for real estate or other assets that are demonstrated by the bank holding company to have value and marketability characteristics similar to real estate.

(iii) Transfers of DPC property within the bank holding company system do not extend any period for divestiture of the property.

(2) *Securities or assets required to be divested by subsidiary.* Voting securities or assets required to be divested by a subsidiary at the request of an examining federal or state authority (except by the Board under the BHC Act or this regulation), if the bank holding company divests the securities or assets within two years from the date acquired from the subsidiary.

(3) *Fiduciary investments.* Voting securities or assets acquired by a bank or other company (other than a trust that is a company) in good faith in a fiduciary capacity, if the voting securities or assets are—

(i) held in the ordinary course of business; and

(ii) not acquired for the benefit of the company or its shareholders, employees, or subsidiaries.

(4) *Securities eligible for investment by a national bank.* Voting securities of the kinds and amounts explicitly eligible by federal statute (other than section 4 of the Bank Service Corporation Act, 12 USC 1864) for invesment by a national bank, and voting securities acquired prior to June 30, 1971, in reliance on section 4(c)(5) of the BHC Act and interpretations of the Comptroller of the Currency under section 5136 of the Revised Statutes (12 USC 24(7)).

(5) *Securities or property representing 5 percent or less of a company.* Voting securities of a company or property that, in the aggregate, represent 5 percent or less of the outstanding shares of any class of voting securities of a company or a 5 percent interest or less in the property, subject to the provisions of 12 CFR 225.137.

(6) *Securities of investment company.* Voting securities of an investment company that is solely engaged in investing in securities and that does not own or control more

than 5 percent of the outstanding shares of any class of voting securities of any company.

(7) *Assets acquired in the ordinary course of business.* Assets of a company acquired in the ordinary course of business, subject to the provisions of 12 CFR 225.132, if the assets relate to activities in which the acquiring company has previously received Board approval under this regulation to engage in the geographic areas to be served.

(8) *Asset acquisitions by consumer finance or mortgage company or industrial bank.* Assets of an office(s) of a company, all or substantially all of which relate to making, acquiring, or servicing loans for personal, family, or household purposes, if—

(i) the acquiring company has previously received Board approval under this regulation to engage in consumer finance, residential mortgage banking, or industrial banking activities in the geographic areas to be served by the acquired office(s);

(ii) the assets acquired during any 12-month period do not represent more than 25 percent of the assets (on a consolidated basis) of the acquiring consumer finance company, mortgage company or industrial bank, or more than $25 million, whichever amount is less;

(iii) the assets acquired do not represent more than 50 percent of the selling company's consolidated assets that are devoted to the consumer finance, residential mortgage banking, or industrial banking business;

(iv) the acquiring company notifies the Reserve Bank of the acquisition within 30 days after the acquisition; and

(v) the acquiring company, after giving effect to the transaction, meets the Board's capital adequacy guidelines (appendix A) and the Board has not previously notified the acquiring company that it may not acquire assets under the exemption in this paragraph.

(d) *Acquisition of securities by subsidiary banks.*

(1) *National bank.* A national bank or its subsidiary may, without the Board's approval under this subpart, acquire or retain securities on the basis of section 4(c)(5) of the BHC Act in accordance with the regulations of the Comptroller of the Currency.

(2) *State bank.* A state-chartered bank or its subsidiary may, insofar as federal law is concerned and without the Board's prior approval under this subpart—

(i) acquire or retain securities, on the basis of section 4(c)(5) of the BHC Act, of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; or

(ii) acquire or retain all (but, except for directors' qualifying shares, not less than all) of the securities of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(e) *Activities and securities of new bank holding companies.* A company that becomes a bank holding company may, for a period of two years, engage in nonbanking activities and control voting securities or assets of a nonbank subsidiary, if the bank holding company engaged in such activities or controlled such voting securities or assets on the date it became a bank holding company. The Board may grant requests for up to three one-year extensions of the two-year period.

(f) *Grandfathered activities and securities.* Unless the Board orders divestiture or termination under section 4(a)(2) of the BHC Act, a "company covered in 1970," as defined in section 2(b) of the BHC Act, may—

(1) retain voting securities or assets and engage in activities that it has lawfully held or engaged in continuously since June 30, 1968; and

(2) acquire voting securities of any newly formed company to engage in such activities.

(g) *Securities or activities exempt under Regulation K.* A bank holding company may acquire voting securities or assets and engage in activities as authorized in Regulation K (12 CFR 211).

SECTION 225.23—Procedures for Applications, Notices, and Hearings

(a) *Application or notice required for nonbanking activities.* An application or notice for the Board's prior approval under section 225.21(a) of this subpart for the following transactions shall be filed by a bank holding company with the appropriate Reserve Bank on the designated form in accordance with the Board's Rules of Procedure (12 CFR 262.2):

(1) *Engaging de novo in listed nonbanking activities.* A notice is required to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity listed in section 225.25 of this subpart. The applicant may commence the activity 30 days after receipt by the Reserve Bank of the notice unless the Reserve Bank within the 30-day period—

(i) returns the notice because it is incomplete or requires an application under paragraph (a)(2) or (3) of this section;

(ii) notifies the company that it may consummate the transaction at an earlier date;

(iii) extends the 30-day period for an additional 15 days; or

(iv) refers the notice to the Board for decision because substantive adverse comment is received or it otherwise appears appropriate.

If the 30-day period is extended by the Reserve Bank to request necessary additional information, the 15-day period does not commence until after the Reserve Bank receives the requested information. The Reserve Bank shall promptly send a copy of any notice received under this paragraph to the Board.

(2) *Acquiring a company engaged in listed nonbanking activities.* An application is required to acquire or control voting securities or assets of a company engaged in a permissible nonbanking activity listed in section 225.25 of this subpart.

(3) *Engaging in or acquiring a company to engage in unlisted nonbanking activities.* An application is required to commence or to engage de novo, or to acquire or control voting securities or assets of a company engaged in, any activity not listed in section 225.25 of this subpart. The application shall contain evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(b) *Notice to expand or alter nonbanking activities.*

(1) *De novo expansion.* A notice under paragraph (a)(1) of this section is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activity that the Board has previously approved for the bank holding company under this regulation, only if—

(i) the Board's prior approval was limited geographically;

(ii) the activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) the Board or appropriate Reserve Bank has notified the company that a notice under paragraph (a)(1) of this section is required.

The Board may require an application under paragraph (a)(2) or (a)(3) of this section instead of a notice.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR Part 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* A notice under paragraph (a)(1) of this section is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity. The Board may require an application

under paragraph (a)(2) or (3) of this section instead of a notice.

(c) *Accepting application for processing.* Within 10 business days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing, request additional information to complete the application, or return the application to the applicant if it is substantially incomplete. If additional information is requested, the Reserve Bank shall, within five business days of receipt of the requested information, either accept the application for processing or return the application to the applicant if it is still incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board.

(d) *Federal Register notice.*

(1) *Listed activities.* Upon receipt by the Reserve Bank of an application or notice involving an activity listed in section 225.25 of this subpart, notice of the application or proposal shall be promptly sent to the *Federal Register* for publication. The *Federal Register* notice shall invite comment for a period of not more than 30 days.

(2) *Unlisted activities.* In the case of an application under this section involving an activity not listed in section 225.25 of this subpart, the Board shall, within 10 business days of acceptance by the Reserve Bank, send notice of the application to the *Federal Register* for publication, unless the Board determines that the applicant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the applicant. In the event notice of an application is not published for comment, the Board shall inform the applicant of the reasons for the decision. The *Federal Register* notice shall invite comment on the proposal for a reasonable period of time, generally for 30 days.

(e) *Action on applications.*

(1) *Action under delegated authority.* The Reserve Bank shall approve an application under paragraph (a)(2) of this section within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate. Upon written notice to the applicant, the Reserve Bank may extend the 30-day period for 15 days. If the extension of time is to request necessary additional information, the 15-day period does not commence until the Reserve Bank receives the requested information.

(2) *Board action.* The Board shall act on an application or notice under this section that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application or received the notice, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and explains the reasons for the extension. In no event may the extension exceed the 91-day period specified in paragraph (h) of this section. The Board may request additional information that it believes is necessary for its decision.

(f) *Expedited procedure for small acquisitions.*

(1) *Filing notice.* As an alternative to the application procedure of paragraph (a)(2) of this section, a bank holding company may apply to acquire voting securities or assets of a company engaged in an activity listed in section 225.25 of this subpart by (i) providing the appropriate Reserve Bank with a description of the transaction; and either (ii) submitting a copy of a newspaper notice in the form prescribed by the Board; or (iii) requesting the Board to publish notice of the application in the *Federal Register.* The newspaper notice shall be published in a newspaper of general circulation in the areas to be served as a result of the acquisition and shall provide an opportunity for interested persons to comment on the application for a period of at least 10 calendar days. If the applicant elects *Federal Register* notice, the notice shall provide an opportunity for interested persons to comment for a period of at least 15 calendar days.

(2) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if—

(i) neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds $15 million;

(ii) the bank holding company has previously received Board approval to engage in the activity involved in the acquisition; and

(iii) the bank holding company meets the Board's capital adequacy guidelines (appendix A).

(3) *Action on application.* Within 5 business days after the close of the comment period specified in the *Federal Register* notice or within 15 calendar days after receipt by the Reserve Bank of the newspaper notice, the Reserve Bank shall either approve the application or refer it to the Board for decision if action under delegated authority is not appropriate. The Board shall act on an application under this paragraph that is referred to it for decision in accordance with paragraph (e)(2) of this section. The Reserve Bank, upon written notice to the applicant, may extend the time period for approval under this paragraph for a reasonable period of time not to exceed 30 days. The Reserve Bank or the Board may require an application under paragraph (a)(2) of this section.

(g) *Hearing.* Any request for a hearing on an application or notice under this section shall comply with the provisions of section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)). The Board may order a formal or informal hearing or other proceeding on an application, as provided in section 262.3(i)(2) of the Rules of Procedure (12 CFR 262.3(i)(2)). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(h) *Approval through failure to act; 91-day rule.* An application or notice under this subpart shall be deemed approved if the Board fails to act on the application or notice within 91 calendar days after the date of submission to the Board of the complete record on the application or notice. The procedures for computation of the 91-day rule as set forth in section 225.14(g) of subpart B of this regulation apply to applications and notices under this subpart.

(i) *Emergency thrift institution acquisitions.* In the case of an application to acquire a thrift institution, the Board may modify or dispense with the notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary federal regulator of the institution concurs.

SECTION 225.24—Factors Considered in Acting on Nonbanking Applications

In evaluating an application or notice under section 225.23 of this subpart, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on those resources. Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity de novo is presumed to result in benefits to the public through increased competition.

SECTION 225.25—List of Permissible Nonbanking Activities

(a) *Closely related nonbanking activities.* The activities listed below are so closely related to banking or managing or controlling banks as to be a proper incident thereto and may be engaged in by a bank holding company or a subsidiary thereof in accordance with and subject to the requirements of this regulation.

(b) (1) *Making and servicing loans.* Making, acquiring, or servicing loans or other exten-

sions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made, for example, by the following types of companies:

(i) consumer finance;

(ii) credit card;

(iii) mortgage;

(iv) commercial finance; and

(v) factoring.

(2) *Industrial banking.* Operating an industrial bank, Morris Plan bank, or industrial loan company, as authorized under state law, so long as the institution is not a bank.

(3) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, so long as the institution is not a bank and does not make loans or investments or accept deposits other than—

(i) deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law;

(ii) deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property; or for such owner or investor as agent or custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing agent, or securities clearing agent; provided such deposits are not employed by or for the account of the customer in the manner of a general-purpose checking account or interest-bearing account; or

(iii) making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. (Such authorized loans and investments, however, may not be used as a method of channeling funds to nonbanking affiliates of the trust company.)

(4) *Investment or financial advice.* Acting as investment or financial advisor to the extent of—

(i) serving as the advisory company for a mortgage or a real estate investment trust;

(ii) serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 USC 80a-2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(iii) providing portfolio investment advice[1] to any other person;

(iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies;[2] and

(v) providing financial advice to state and local governments, such as with respect to the issuance of their securities.

(5) *Leasing personal or real property.* Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

[1] The term "portfolio investment" is intended to refer generally to the investment of funds in a "security" as defined in section 2(1) of the Securities Act of 1933 (15 USC 77b) or in real property interests, except where the real property is to be used in the trade or business of the person being advised. In furnishing portfolio investment advice, bank holding companies and their subsidiaries shall observe the standards of care and conduct applicable to fiduciaries.

[2] This is to be contrasted with "management consulting," which the Board views as including, but not limited to, the provision of analysis or advice as to a firm's (A) purchasing operations, such as inventory control, sources of supply, and cost minimization subject to constraints; (B) production operations, such as quality control, work measurement, product methods, scheduling shifts, time and motion studies, and safety standards; (C) marketing operations, such as market testing, advertising programs, market development, packaging, and brand development; (D) planning operations, such as demand and cost projections, plant location, program planning, corporate acquisitions and mergers, and determination of long-term and short-term goals; (E) personnel operations, such as recruitment, training, incentive programs, employee compensation, and management-personnel relations; (F) internal operations, such as taxes, corporate organization, budgeting systems, budget control, data processing systems evaluation, and efficiency evaluation; or (G) research operations, such as product development, basic research, and product design and innovation. The Board has determined that "management consulting" is not an activity that is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(i) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(iii) the lease is on a nonoperating basis;[3]

(iv) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions[4]) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,[5] from—

(A) rentals;

(B) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect);

(C) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 percent of the acquisition cost of the property to the lessor; and

(D) in the case of a lease of personal property of not more than seven years in duration, such additional amount, which shall not exceed 60 percent of the acquisition cost of the property, as may be provided by an unconditional guarantee by a lessee, independent third party, or manufacturer, which has been determined by the lessor to have the financial resources to meet such obligation, that will assure the lessor of recovery of its investment and cost of financing;

(v) the maximum lease term during which the lessor must recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be 40 years; and

(vi) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease;[6] however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(6) *Community development.* Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(7) *Data processing.* Providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facili-

[3] For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly (A) provide for the servicing, repair, or maintenance of the leased vehicle during the lease term; (B) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (C) provide for the loan of an automobile during servicing of the leased vehicle; (D) purchase insurance for the lessee; or (E) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

[4] The Board understands that some federal, state, and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized to conduct leasing activities under this paragraph from entering into a lease with such governmental entities if the company reasonably anticipates that the governmental entities will renew the lease annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further, a company authorized to conduct personal property leasing activities under this paragraph may also engage in so-called "bridge" lease financing of personal property, but not real property, if the lease is short-term pending completion of long-term financing, by the same or another lender.

[5] The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee, if a factor in the financing, and prevailing rates in the money and capital markets.

[6] In the event of a default on a lease agreement prior to the expiration of the lease term, the lessor shall either release the property, subject to all the conditions of this paragraph, or liquidate the property as soon as practicable but in no event later than two years from the date of default on a lease agreement or such additional time as the Board may permit under section 225.22(c)(1) of this regulation, as if the property were DPC property.

ties, or data bases by any technological means, if—

(i) the data to be processed or furnished are financial, banking, or economic, and the services are provided pursuant to a written agreement so describing and limiting the services;

(ii) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and

(iii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(8) *Insurance sales.* Except as prohibited in title VI of the Garn-St Germain Depositary Institutions Act of 1982 (12 USC 1843(c)(8)), 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; and

(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), if the principal place of banking business of the bank holding company is located in a community having a population not exceeding 5,000.

(9) *Underwriting credit life, accident and health insurance.* Acting as underwriter for credit life insurance and credit accident and health insurance that is directly related to an extension of credit by the bank holding company system.[7]

(10) *Courier services.* Providing courier services for—

(i) checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(ii) audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[8]

(11) *Management consulting to depository institutions.* 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, if—

(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 permitted pursuant to an exemption granted 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 institu-

[7] To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service.

[8] See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for bank holding company entry into the activity.

[9] A bank holding company that has received the Board's prior approval to engage in offering management consulting advice to nonaffiliated commercial banks as of April 20, 1982, may offer such advice on a de novo basis to nonbank depository institutions pursuant to this paragraph without filing an application under section 225.23 of this subpart.

tion 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 that are affiliates of the consulting company, and

(B) the names of all existing client institutions located in the same county(ies), metropolitan statistical area, or primary metropolitan statistical area as the client institution.[10]

(12) *Money orders, savings bonds, and traveler's checks.* The issuance and sale at retail of money orders and similar consumer-type payment instruments having a face value of not more than $1,000; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

(13) *Real estate appraising.* Performing appraisals of real estate.

(14) *Arranging commercial real estate equity financing.* Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors, if—

(i) the financing arranged exceeds $1 million;

(ii) the bank holding company and its affiliates do not provide financing to the investors to acquire a real estate project for which the bank holding company arranges equity financing;

(iii) the bank holding company and its affiliates do not have an interest in or participate in managing, developing, or syndicating a real estate project for which it arranges equity financing, and do not promote or sponsor the development or syndication of such property; and

(iv) the fee received for arranging equity financing for a real estate project is not based on profits to be derived from the project and is not larger than the fee that would be charged by an unaffiliated intermediary.

(15) *Securities brokerage.* Providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing or investment advice or research services.

(16) *Underwriting and dealing in government obligations and money market instruments.* Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 USC 24 and 335, including bankers acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks.

(17) *Foreign exchange advisory and transactional services.* Providing, by any means, general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating, and managing their foreign exchange exposures; and transactional services with respect to foreign exchange by arranging for "swaps" among customers with complementary foreign exchange exposures and for the execution of foreign exchange transactions; provided the activity is conducted through a separately incorporated subsidiary of the bank holding company that—

(i) does not take positions in foreign exchange for its own account;

[10] 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 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 commercial banks and any other type of depository institution.

(ii) observes the standards of care and conduct applicable to fiduciaries with respect to its foreign exchange advisory and transactional services; and

(iii) does not itself execute foreign exchange transactions.

(18) *Futures commission merchant.* Acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account, if the activity is conducted through a separately incorporated subsidiary of the bank holding company that—

(i) does not become a clearing member of any exchange or clearing association that requires the parent corporation of the clearing member to also become a member of that exchange or clearing association unless a waiver of the requirement is obtained;

(ii) does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument;

(iii) time stamps orders of all customers to the nearest minute, executes all orders strictly in chronological sequence to the extent consistent with the customers' specifications, and executes all orders with reasonable promptness with due regard to market conditions;

(iv) does not extend credit to customers for the purpose of meeting initial or maintenance margins required of customers except for posting margin on behalf of customers in advance of prompt reimbursement; and

(v) has and maintains capitalization fully adequate to meet its own commitments and those of its customers, including affiliates.

SUBPART D—CONTROL AND DIVESTITURE PROCEEDINGS

SECTION 225.31—Control Proceedings

(a) *Preliminary determination of control.* (1) The Board may issue a preliminary determination of control under the procedures set forth in this section in any case in which—

(i) any of the presumptions of control set forth in paragraph (d) of this section is present; or

(ii) it otherwise appears that a company has the power to exercise a controlling influence over the management or policies of a bank or other company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the controlling company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* Within 30 calendar days of issuance by the Board of a preliminary determination of control or such longer period permitted by the Board, the company against whom the determination has been made shall—

(1) submit for the Board's approval a specific plan for the prompt termination of the control relationship;

(2) file an application under subpart B or C of this regulation to retain the control relationship; or

(3) contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(c) *Hearing and final determination.* (1) The Board shall order a formal hearing or other appropriate proceeding upon the request of a company that contests a preliminary determination that the company has the power to exercise a controlling influence over the management or policies of a bank or other company, if the Board finds that material facts are in dispute. The Board may also in its discretion order a formal hearing

or other proceeding with respect to a preliminary determination that the company controls voting securities of the bank or other company under the presumptions in paragraph (d)(1) of this section.

(2) At a hearing or other proceeding, any applicable presumptions established by paragraph (d) of this section shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR 263).

(3) After considering the submissions of the company and other evidence, including the record of any hearing or other proceeding, the Board shall issue a final order determining whether the company controls voting securities, or has the power to exercise a controlling influence over the management or policies, of the bank or other company. If a control relationship is found, the Board may direct the company to terminate the control relationship or to file an application for the Board's approval to retain the control relationship under subpart B or C of this regulation.

(d) *Rebuttable presumptions of control.* The following rebuttable presumptions shall be used in any proceeding under this section:

(1) *Control of voting securities.*

(i) *Securities convertible into voting securities.* A company that owns, controls, or holds securities that are immediately convertible, at the option of the holder or owner, into voting securities of a bank or other company, controls the voting securities.

(ii) *Option or restriction on voting securities.* A company that enters into an agreement or understanding under which the rights of a holder of voting securities of a bank or other company are restricted in any manner controls the securities. This presumption does not apply where the agreement or understanding—

(A) is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares;

(B) is incident to a bona fide loan transaction; or

(C) relates to restrictions on transferability and continues only for the time necessary to obtain approval from the appropriate federal supervisory authority with respect to acquisition by the company of the securities.

(2) *Control over company.*

(i) *Management agreement.* A company that enters into any agreement or understanding with a bank or other company (other than an investment advisory agreement), such as a management contract, under which the first company or any of its subsidiaries directs or exercises significant influence over the general management or overall operations of the bank or other company controls the bank or other company.

(ii) *Shares controlled by company and associated individuals.* A company that, together with its management officials or principal shareholders (including members of the immediate families of either as defined in 12 CFR 206.2(k)), owns, controls, or holds with power to vote 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company controls the bank or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

(iii) *Common management officials.* A company that has one or more management officials in common with a bank or other company controls the bank or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company, and no other person controls as much as 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

(iv) *Shares held as fiduciary.* The presumptions in paragraphs (d)(2)(ii) and (iii) of this section do not apply if the securities are held by the company in a fiduciary capacity without sole discre-

tionary authority to exercise the voting rights.

(e) *Presumptions of noncontrol.* (1) In any proceeding under this section, there is a presumption that any company that directly or indirectly owns, controls, or has power to vote less than 5 percent of the outstanding shares of any class of voting securities of a bank or other company does not have control over that bank or other company.

(2) In any proceeding under this section, or judicial proceeding under the BHC Act, other than a proceeding in which the Board has made a preliminary determination that a company has the power to exercise a controlling influence over the management or policies of the bank or other company, a company may not be held to have had control over the bank or other company at any given time, unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 percent or more of the outstanding shares of any class of voting securities of the bank or other company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

SECTION 225.32—Divestiture Proceedings

(a) *Ineffective divestitures.* (1) The divestiture of assets or voting securities by a bank holding company (or a company that would be a bank holding company but for the divestiture) is ineffective, and the divesting company shall be presumed to control the acquiring person or the divested assets or securities, if—

(i) the acquiring person is indebted in any manner to the divesting company; or

(ii) the divesting company has any management official in common with the acquiring person.

(2) For the purposes of this section:

(i) "indebtedness" does not include routine business or personal credit that is unrelated to the divestiture transaction and that is extended by the divesting company in the ordinary course of its lending business; and

(ii) "divesting company" and "acquiring person" include their parent companies, subsidiaries, and, if the acquiring person is an individual, companies controlled by the individual.

(b) *Request for divestiture determination.* For any divestiture that is deemed ineffective under paragraph (a) of this section, the divesting company may request the Board to determine that the divestiture is in fact effective by submitting a letter that includes—

(1) a description of the divestiture transaction and the existing and prospective relationship between the divesting company and the acquiring person;

(2) evidence and argument demonstrating that the divesting company is not capable of controlling the acquiring person or the divested assets or securities; and

(3) a request for a hearing, if desired.

(c) *Hearing.* The Board shall order a formal hearing or other appropriate proceeding upon the request of a divesting company under paragraph (b) of this section, if the Board finds that material facts are in dispute. The Board may also order a formal hearing or other proceeding if, in the Board's judgment, such a proceeding would be appropriate.

(d) *Standards for making divestiture determination.* In acting on the request of a divesting company under paragraph (b) of this section, the Board shall consider the following factors, among others, in determining whether the divesting company is capable of controlling the acquiring person or the divested assets or securities:

(1) *Indebtedness of acquiring person to divesting company.*

(i) the terms of the indebtedness, including the amount of the indebtedness in relation to the total purchase price;

(ii) the ability of the acquiring person to repay the indebtedness; and

(iii) the manner in which the divesting company would dispose of the divested assets in the event it reacquires the assets as a result of default on the indebtedness.

(2) *Management official interlocks.* The extent of the involvement of the interlocking management official in the operations of the divesting company and the acquiring person, and the management official's relationship to the assets or securities being divested.

(e) *Final determination.* After considering the submission of the divesting company and other evidence, including the record of any hearing or other proceeding, the Board shall issue an order determining whether the company controls or is capable of controlling the acquiring person or the divested assets or securities.

(f) *Review of other divestitures.* In any divestiture of assets or securities by a company that is not covered under paragraph (a) of this section, the Board may review the divestiture to assure that the divesting company is not capable of controlling the acquiring person or the divested assets or securities.

SUBPART E—CHANGE IN BANK CONTROL*

SECTION 225.41—Transactions Requiring Prior Notice

(a) *Prior-notice requirement.* (1) Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the Board 60 days' written notice, as specified in section 225.43 of this subpart, before acquiring control of a state member bank or bank holding company, unless the acquisition is exempt under section 225.42 of this subpart.

(2) For the purposes of this subpart, "acquisition" includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a bank or other company resulting from a redemption of voting securities.

(b) *Acquisitions requring prior notice.* The following transactions constitute, or are presumed to constitute, the acquisition of control under the Bank Control Act, requiring prior notice to the Board:

(1) the acquisition of any voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person (or persons acting in concert) owns, controls, or holds with power to vote 25 percent or more of any class of voting securities of the institution; or

(2) the acquisition of any voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person (or persons acting in concert) owns, controls, or holds with power to vote 10 percent or more (but less than 25 percent) of any class of voting securities of the institution, and if:

(i) the institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 USC 78*l*); or

(ii) no other person will own a greater percentage of that class of voting securities immediately after the transaction.

(c) *Rebuttal of presumption of control.* Prior notice to the Board is not required for any acquisition of voting securities under the presumption set forth in paragraph (b)(2) of this section, if the Board finds that the acquisition will not result in control. The Board will afford the person seeking to rebut the presumption an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) resulting in a person's control of less than 25 percent of a class of voting securities of a state member bank or bank holding company do not result in control for purposes of the Bank Control Act.

SECTION 225.42—Transactions Not Requiring Prior Notice

The following transactions do not require prior notice to the Board under this subpart:

(a) *Increase of previously authorized acquisitions.* The acquisition of additional shares of a

* The Change in Bank Control Act amended section 7(j) of the Federal Deposit Insurance Act (12 USC 1817(j)).

class of voting securities of a state member bank or bank holding company by any person who has lawfully acquired and maintained control of 25 percent or more of that class of voting securities after filing the notice required under section 225.41(b)(1) of this subpart.

(b) *Acquisitions subject to approval under BHC Act or Bank Merger Act.* Any acquisition of voting securities subject to approval under section 3 of the BHC Act (section 225.11 of subpart B), or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 USC 1828(c)).

(c) *Transactions exempt under BHC Act.* Any acquisition described in sections 2(a)(5) or 3(a)(A) or (B) of the BHC Act (12 USC 1841(a)(5), 1842(a)(A) and (B)) by a person described in those provisions.

(d) *Grandfathered control relationships.* (1) The acquisition of additional voting securities of a state member bank or bank holding company by a person who continuously since March 9, 1979 (or since that institution commenced business, if later) held power to vote 25 percent or more of any class of voting securities of that institution; or

(2) the acquisition of additional voting securities of a state member bank or bank holding company by a person who is presumed under section 225.41(b)(2) of this subpart to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent of any class of voting securities of the institution.

(e) *Acquisition in satisfaction of debts previously contracted or through inheritance or gift.* Any acquisition of voting securities, which would otherwise require a notice under this subpart, in satisfaction of a debt previously contracted in good faith, or through inheritance or a bona fide gift, if the acquiring person notifies the appropriate Reserve Bank within 30 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank.

(f) *Proxy solicitation.* The acquisition of the power to vote securities of a state member bank holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purpose of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting.

(g) *Stock dividends.* The receipt of voting securities of a state member bank or bank holding company through a stock dividend or stock split if the proportional interest of the recipient in the institution remains substantially the same.

(h) *Acquisition of foreign banking organization.* The acquisition of voting securities of a qualifying foreign banking organization. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 USC 1817(j)(9), (10), and (12)).

SECTION 225.43—Procedures for Filing, Processing, and Acting on Notices

(a) *Filing notice.* A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain the information required by paragraph 6 of the Bank Control Act (12 USC 1817(j)(6)), or prescribed in the designated Board form. With respect to personal financial statements required by paragraph 5(B) of the Bank Control Act, an individual may include a statement of assets and liabilities as of a date within 90 days of filing the notice, a brief income summary, and a description of any subsequent material changes, subject to the authority of the Reserve Bank or the Board to require additional information.

(b) *Advice to bank supervisory agencies.*

(1) Upon accepting a notice relating to acquisition of securities of a state member bank, the Reserve Bank shall send a copy of the notice to the appropriate state bank supervisor, which shall have 30 calender days from the date the notice is sent in which to submit its views and recommendations to the Board. The Reserve Bank shall also send a copy of any notice it accepts to the

Comptroller of the Currency and the Federal Deposit Insurance Corporation.

(2) If the Board finds that it must act immediately in order to prevent the probable failure of the bank or bank holding company involved, the Board may dispense with or modify the requirements for notice to the state supervisor.

(c) *Time period for Board action.*

(1) *Consummation of acquisition.* (i) A proposed acquisition may be consummated 60 days after submission to the Reserve Bank of a complete notice under paragraph (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period as provided under paragraph (c)(2) of this section.

(ii) A proposed acquisition for which notice has been filed under paragraph (a) of this section may be consummated before the expiration of the 60-day period if the Board notifies the acquiring person in writing of the Board's intention not to disapprove the acquisition.

(2) *Extensions of time period.* (i) The Board may extend the 60-day period in paragraph (c)(1) of this section for an additional 30 days by notifying the acquiring person.

(ii) The Board may further extend the period for disapproval or return the notice, if the Board finds that the acquiring person has not furnished all the information required under paragraph (a) of this section or has submitted material information that is substantially inaccurate. If the Board so extends the time period, it shall notify the acquiring person of the information that is incomplete or inaccurate.

(d) *Investigation of notice.* In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person (including any bank or bank holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority). No person (other than the acquiring person), whose views are solicited or who presents information, thereby becomes a party to the proceeding or acquires any standing or right to participate in the Board's consideration of the notice.

(e) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice. The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors set forth in paragraph 7 of the Bank Control Act (12 USC 1817(j)(7)) (i.e., competitive, financial, managerial, banking, or incompleteness of information).

(f) *Disapproval and hearing.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action. Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

APPENDIXES

APPENDIX A—Capital Adequacy Guidelines

Definition of Capital to Be Used in Determining Capital Adequacy of National and State Member Banks and Bank Holding Companies

Primary Components of Capital

The primary components of capital are—

- common stock,

- perpetual preferred stock,
- surplus,
- undivided profits,
- contingency and other capital reserves,
- mandatory convertible instruments (capital instruments with covenants mandating conversion into common or perpetual preferred stock),
- allowance for possible loan and lease losses, and
- minority interest in equity accounts of consolidated subsidiaries.

Secondary Components of Capital

It is recognized that other financial instruments can, with certain restrictions, be considered as part of capital because they possess some, though not all, of the features of capital. These instruments are—

- limited-life preferred stock and
- bank subordinated notes and debentures and unsecured long-term debt of the parent company and its nonbank subsidiaries.

Restrictions Relating to Secondary Components

The secondary components will be considered as capital under the conditions listed below:

- The issue must have an original weighted average maturity of at least seven years.
- If the issue has a serial or installment repayment program, all scheduled repayments shall be made at least annually, once contractual repayment of principal begins, and the amount repaid in a given year shall be no less than the amount repaid in the previous year.
- For banks only, the aggregate amount of limited-life preferred stock and subordinated debt qualifying as capital may not exceed 50 percent of the amount of the bank's primary capital.
- As the secondary components approach maturity, redemption or payment, the outstanding balance of all such instruments—including those with serial note payments, sinking fund provisions, or an amortization schedule—will be amortized in accordance with the following schedule:

Years to Maturity	*Percent of Issue Considered Capital*
Greater than or equal to 5	100
Less than 5 but greater than or equal to 4	80
Less than 4 but greater than or equal to 3	60
Less than 3 but greater than or equal to 2	40
Less than 2 but greater than or equal to 1	20
Less than 1	0

No adjustment in the book amount of the issue is required or expected by this schedule. Adjustment will be made by a memorandum account.

Minimum Capital Guidelines

The Federal Reserve and the Office of the Comptroller of the Currency have developed minimum capital guidelines to provide a framework for assessing the capital of well-managed national banks, state member banks, and bank holding companies.[1] The guidelines are used in the examination and supervisory process and will be reviewed from time to time for possible adjustment commensurate with changes in the economy, financial markets, and banking practices.

Objectives of the minimum capital guidelines are to—

- Introduce greater uniformity, objectivity and consistency into the supervisory approach for assessing capital adequacy;
- Provide direction for capital and strategic planning to banks and bank holding companies and for the appraisal of this planning by the agencies; and
- Permit some reduction of existing disparities in capital ratios between banking organizations of different size.

Two principal ratio measurements of capital are used: (1) primary capital to total assets and (2) total capital to total assets. Primary

[1] Institutions that are under special supervision and those that have been in operation for less than two years are not included in the program.

capital consists of common stock, perpetual preferred stock, capital surplus, undivided profits, reserves for contingencies and other capital reserves, mandatory convertible instruments, the allowance for possible loan and lease losses, and any minority interest in the equity accounts of consolidated subsidiaries. Total capital includes the primary capital components plus limited-life preferred stock and qualifying notes and debentures.

The capital guidelines generally will be applied on a consolidated basis. However, for those bank holding companies with consolidated assets under $150 million, the capital guidelines will apply only to the bank if (1) the company does not engage directly or indirectly in any nonbanking activity involving significant leverage and (2) no significant debt of the parent company is held by the general public.

Some bank holding companies are engaged in significant nonbanking activities that require capital ratios higher than those for the bank alone. In these cases, appropriate adjustments will be made in the application of the consolidated capital guidelines.

Institutions affected by the guidelines are categorized as either multinational organizations (as designated by their respective supervisory agency), regional organizations (all other institutions with assets in excess of $1 billion)[2], or community organizations (less than $1 billion in total assets).

A minimum level of primary capital to total assets is established at 5 percent for multinational and regional organizations and 6 percent for community organizations. Generally, banking organizations are expected to operate above the minimum primary capital levels. Also, those banking organizations that have a higher-than-average percentage of their assets exposed to risk, or have a higher-than-average amount of off-balance-sheet risk, may be expected to hold additional primary capital to compensate for this risk.

The agencies also have established capital guidelines for the total capital to total assets ratio. These guidelines consist of three broad zones:

	Multinational and Regional	*Community*
Zone 1	Above 6.5%	Above 7.0%
Zone 2	5.5% to 6.5%	6.0% to 7.0%
Zone 3	Below 5.5%	Below 6.0%

Generally, the nature and intensity of supervisory action will be determined by the zone in which an institution falls. While an institution's position in the quantitative capital zones will normally trigger the following specified supervisory responses, qualitative analysis will continue to be used in determining minimum levels of capital for banking institutions.

For banking institutions operating in zone 1, the agencies will—

- presume that capital is adequate if the primary capital ratio is acceptable to the regulator and is above the minimum level and
- intensify analysis and action when unwarranted declines in capital ratios occur.

For banking institutions operating in zone 2, the agencies will—

- presume that the institution may be undercapitalized, particularly if the primary and total capital ratios are at or near the minimum guidelines;
- engage in extensive contact and discussion with the management and require the submission of comprehensive capital plans acceptable to the regulator; and
- closely monitor the capital position over time.

The agencies' approach to institutions operating in zone 3 will include—

- a very strong presumption that the institution is undercapitalized;
- frequent contact with management and a requirement that the institution submit a comprehensive capital plan, including a capital augmentation program that is acceptable to the regulator; and
- continuous analysis, monitoring, and supervision.

[2] May include some other institutions located in money centers.

The guidelines will be applied in a flexible manner with exceptions as appropriate. The assessment of capital adequacy will continue to be made on a case-by-case basis considering various qualitative factors that affect an institution's overall financial condition. Thus, the agencies retain the flexibility to make appropriate adjustments in the application of the guidelines to individual institutions.

APPENDIX B—Policy Statement on Formation of Small One-Bank Holding Companies

Assessment of Financial Factors

In acting on applications filed under the Bank Holding Company Act, the Board has adopted, and continues to follow, the principle that bank holding companies should serve as a source of strength for their subsidiary banks. When bank holding companies incur debt and rely upon the earnings of their subsidiary banks as the means of repaying such debt, a question arises as to the probable effect upon the financial condition of the company and its subsidiary bank or banks.

The Board believes that a high level of debt at the parent-holding-company level impairs the ability of a bank holding company to provide financial assistance to its subsidiary bank, and in some cases the servicing requirements on such debt may be a significant drain on the bank's resources. For these reasons, the Board has not favored the use of acquisition debt in the formation of bank holding companies. Nevertheless, the Board has recognized that the transfer of ownership of small banks often requires the use of acquisition debt. The Board therefore has permitted the formation of small one-bank holding companies with debt levels higher than would be permitted for larger or multibank holding companies. Approval of these applications has been given on the condition that the small one-bank holding companies demonstrate the ability to service the acquisition debt without straining the capital of their subsidiary bank and, further, that such companies restore their ability to serve as a source of strength for their subsidiary bank within a relatively short period of time.

In the interest of furthering its policy of facilitating the transfer of ownership in banks without diluting bank safety and soundness, the Board has reexamined the analytical framework and financial criteria it applies when considering the formation of small one-bank holding companies and has adopted certain revisions in its procedures and standards as described below.

The revised criteria shift the focus from debt repayment to the relationship between debt and equity at the parent holding company. The holding company will have the option of improving the relationship of debt to equity by repaying the principal amount of its debt or through the retention of earnings, or both. Under these procedures, newly organized small one-bank holding companies will be expected to reduce the relationship of their debt to equity over a reasonable period of time to a level comparable to that maintained by many large and multibank holding companies.

In general, this policy is intended to apply only to one-bank holding companies that would not have significant leveraged nonbank activities and whose subsidiary bank would have total assets of approximately $150 million or less at the time the application is filed. Small one-bank holding companies formed before the initial effective date of the Board's policy concerning formation of small one-bank holding companies and assessment of financial factors (March 28, 1980) may switch to a plan that adheres to the intent of this policy provided they comply with criteria 2, 3, and 4 set forth below.

General

In evaluating applications filed pursuant to section 3(a)(1) of the Bank Holding Company Act, as amended, when the applicant intends to incur debt to finance the acquisition of a small bank, the Board will take into account a full range of financial and other information, including the recent trend and stability of earnings of the bank, the past and prospective growth of the bank, the quality of the bank's assets, the ability of the applicant to meet debt-servicing requirements without placing an undue strain on the bank's resources, and the record and competency of manage-

ment of the applicant and the bank. In addition, the Board will require applicants to meet the minimum requirements set forth below. As a general rule, failure to meet any of these requirements will result in denial of the application; however, the Board reserves the right to make exceptions if the circumstances warrant.

1. *Minimum Downpayment.* The amount of acquisition debt should not exceed 75 percent of the purchase price of the bank to be acquired. When the owner(s) of the holding company incur debt to finance the purchase of the bank, such debt will be considered acquisition debt even though it does not represent an obligation of the bank holding company, unless the owner(s) can demonstrate that such debt can be serviced without reliance on the resources of the bank or bank holding company.

2. *Maintenance of Adequate Capital.* An applicant proposing to use acquisition debt must demonstrate to the satisfaction of the Board that any debt-servicing requirements to which the bank holding company may be subject would not cause the subsidiary bank's ratio of gross capital to assets to fall below 8 percent during the 12-year period following consummation of the acquisition. Gross capital is defined as the sum of total stockholders' equity, the allowance for possible loan losses, and subordinated capital notes and debentures.

3. *Reduction in Parent Company Leverage.* The applicant must demonstrate to the satisfaction of the Board that the parent holding company's ratio of debt to equity will decline to 30 percent within 12 years after consummation of the acquisition. The holding company must also demonstrate that it will be able safely to meet debt-servicing and other requirements imposed by its creditors.

The term "debt," as used in the ratio of debt to equity, means any borrowed funds (exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

The term "equity," as used in the ratio of debt to equity, means the total stockholders' equity of the bank holding company adjusted to reflect the periodic amortization of "goodwill" (defined as the excess of cost of any acquired company over the sum of the amounts assigned to identifiable assets acquired, less liabilities assumed) in accordance with generally accepted accounting principles. In determining the total amount of stockholders' equity, the bank holding company should account for its investments in the common stock of subsidiaries by the equity method of accounting.

Ordinarily the Board does not view redeemable preferred stock as a substitute for common stock in a one-bank holding company formation. Nevertheless, to a limited degree and under certain circumstances the Board will consider redeemable preferred stock as equity in the capital accounts of the holding company if the following conditions are met: (1) the preferred stock is redeemable only at the option of the issuer and (2) the debt-to-equity ratio of the holding company would be at or remain below 30 percent following the redemption or retirement of any preferred stock. Preferred stock that is convertible into common stock of the holding company may be treated as equity.

4. *Dividend Restrictions.* The bank holding company is not expected to pay any corporate dividends on common stock until such time as its debt-to-equity ratio is below 30 percent. However, some dividends may be permitted provided all of the following conditions are met: (1) the applicant has begun making scheduled repayments of principal on the acquisition debt; (2) such scheduled repayments of principal are reasonable in amount, will be made at least annually, and will allow for the retirement of the acquisition debt over a period not to exceed 25 years; and (3) the applicant can clearly demonstrate at the time the application is filed that such dividends will not jeopardize the ability of the holding company to reduce its debt-to-equity ratio to 30 percent within 12 years of consummation of the proposal or cause the gross capital to assets of the subsidiary bank to fall below 8 percent over the same period. Also, it is expected

that dividends will be eliminated if the holding company is not meeting the projections made at the time the application was filed regarding the ability of the holding company to reduce the debt-to-equity ratio to 30 percent within 12 years of consummation of the proposal.

The requirements of this policy statement should be read in the context of the Board's capital adequacy guidelines (appendix A), including the definitions of "capital" and its components.

Bank Holding Company Act of 1956

12 USC 1841 et seq.; 70 Stat. 133, Pub. L. 84-511 (May 9, 1956)

Section

To define bank holding companies, control their future expansion, and require divestment of their nonbanking interests.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bank Holding Company Act of 1956."

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SECTION 2—Definitions (12 USC 1841)

(a) (1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act.

(2) Any company has control over a bank or over any company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this Act, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).

(5) Notwithstanding any other provision of this subsection.

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to the date of enactment of the Bank Holding Company Act Amendments of 1970 only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year af-

ter the date of enactment of the Bank Holding Company Act Amendments of 1970.

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a bank holding company by virtue of its ownership or control of any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of its owners, and deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on the date of enactment of the Bank Holding Company Act Amendments of 1970 and is specifically authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 5136 of the Revised Statutes (12 U.S.C. 24).

(6) For the purposes of this Act, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

(b) *"Company"* means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State. "Company covered in 1970" means a company which becomes a bank holding company as a result of the enactment of the Bank Holding Company Act Amendments of 1970 and which would have been a bank holding company on June 30, 1968, if those amendments had been enacted on that date.

(c) *"Bank"* means any institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, except an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation or an institution chartered by the Federal Home Loan Bank Board, which (1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans. Such term does not include any organization operating under section 25 or section 25(a) of the Federal Re-

serve Act, or any organization which does not do business within the United States except as an incident to its activities outside the United States. "District bank" means any bank organized or operating under the Code of Law for the District of Columbia. The term "bank" also includes a State chartered bank or a national banking association which is owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or by a bank holding company which is owned exclusively by other depository institutions and is organized to engage exclusively in providing services for other depository institutions and their officers, directors, and employees.

(d) *"Subsidiary"*, with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board, after notice and opportunity for hearing.

(e) The term *"successor"* shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The Board may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this Act.

(f) *"Board"* means the Board of Governors of the Federal Reserve System.

(g) For the purposes of this Act—

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company;

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company; and

(3) shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

(h)(1) Except as provided by paragraph (2), theapplication of this Act and of section 23A of the Federal Reserve Act (12 U.S.C. 371), as amended, shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States.

(2) The prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States, except that (1) such exempt foreign company (A) may engage in or hold shares of a company engaged in the business of underwriting, selling or distributing securities in the United States only to the extent that a bank holding company may do so under this Act and under regulations or orders issued by the Board

under this Act, and (B) may engage in the United States in any banking or financial operations or types of activities permitted under section 4(c)(8) or in any order or regulation issued by the Board under such section only with the Board's prior approval under that section, and (2) no domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of such company may extend credit to a domestic office or subsidiary of such exempt company on terms more favorable than those afforded similar borrowers in the United States.

(i) The term *"thrift institution"* means (1) a domestic building and loan or savings and loan association, (2) a cooperative bank without capital stock organized and operated for mutual purposes and without profit, (3) a mutual savings bank not having capital stock represented by shares or (4) a Federal savings bank.

[12 USC 1841. As amended by acts of July 1, 1966 (80 Stat. 236), Dec. 31, 1970 (84 Stat. 1760); Sept. 17, 1978 (92 Stat. 623); and Oct. 15, 1982 (96 Stat. 1479, 1504, 1512).] The date of enactment of the Bank Holding Company Act Amendments of 1970 referred to in this section is Dec. 31, 1970.]

SECTION 3—Acquisition of Bank Shares or Assets (12 USC 1842)

(a) *Prior approval of Board as necessary; exceptions; subsequent approval or disposition upon disapproval.* It shall be unlawful, except with the prior approval of the Board, (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g), or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the date of enactment of this Act in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; or (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after the date of enactment of the Bank Holding Company Act Amendments of 1970 shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b) *Application for approval; notice to Comptroller of Currency or State authority; disapproval; hearing; order of Board; nonaction deemed grant of application.* Upon receiving from a company any application for approval under this section, the Board shall give notice

to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of the subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispose with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.

(c) *Factors governing determination of application for approval.* The Board shall not approve—

(1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served. Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company in-

volves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding company having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

(d) *Acquisitions in other states.* Notwithstanding any other provision of this section, no application (except an application filed as a result of a transaction authorized under section 13(f) of the Federal Deposit Insurance Act*) shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on the effective date of this amendment or the date on which such company became a bank holding company, whichever is later, unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication. For the purposes of this section, the State in which the operations of a bank holding company's subsidiaries are principally conducted is that State in which total deposits of all such banking subsidiaries are largest.

(e) *Insured bank.* Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured bank as such term is defined in section 3(h) of the Federal Deposit Insurance Act. This subsection does not apply to a bank described in the last sentence of section 2(c).

[12 USC 1842. As amended by acts of July 1, 1966 (80 Stat. 237); Dec. 31, 1970 (84 Stat. 1763); Nov. 16, 1977 (91 Stat. 1389); March 31, 1980 (94 Stat. 190); and Oct. 15, 1982 (96 Stat. 1479, 1488, 1512).] The date of enactment of the Bank Holding Company Act Amendments of 1970 referred to in this section is Dec. 31, 1970; the date of the amendment referred to in paragraph (d) is July 1, 1966.]

SECTION 4—Interests in Nonbanking Organizations (12 USC 1843)

(a) *Ownership or control of any company not a bank; engagement in activities other than banking.* Except as otherwise provided in this Act, no bank holding company shall—

(1) after the date of enactment of this Act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this Act or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: *Provided,* That a company covered in 1970 may also engage in those activities

* Section 13(f) of the Federal Deposit Insurance Act permits a bank holding company to acquire a failing bank in a state outside its principal state of banking operations.

in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in an activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this Act, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of $60,000,000 on or after the date of enactment of the Bank Holding Company Act Amendments of 1970 the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed $60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board.

The Board is authorized, upon application by a bank holding company, to extend the two-year period referred to in paragraph (2) above from time to time as to such bank holding company for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years. Notwithstanding any other provision of this Act, the period ending December 31, 1980, referred to in paragraph (2) above, may be extended by the Board of Governors to December 31, 1984, but only for the divestiture by a bank holding company of real estate or interests in real estate lawfully acquired for investment or development. In making its decision whether to grant such extension, the Board shall consider whether the company has made a good faith effort to divest such interests and whether such extension is necessary to avert substantial loss to the company.

(b) *Statement purporting to represent shares of any company except a bank or bank holding company.* After two years from the date of enactment of this Act, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

(c) *Exemptions.* The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of

the same family, or their spouses, who are lineal descendants of common ancestors: and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities; (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use: or (B) conducting a safe deposit business: or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries: or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previous contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall extend beyond a date five years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraph (2) and (3) of section 2(g);

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, but for purposes of this subsection it is not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except (A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (B) in the case of a finance company which is a subsidiary of a bank holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extension of credit and, during the period beginning on the date of the enactment of this subparagraph and ending on December 31, 1982, such extension of credit is not more than $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured

home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (C) any insurance agency activity in a place that (i) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (ii) the bank holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (D) any insurance agency activity which was engaged in by the bank holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (i) sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the bank holding company is located, any State or States immediately adjacent to such State, and any State or States in which insurance activities were conducted by the bank holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank holding company or any of its subsidiaries on or before May 1, 1982, and (ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or any of its subsidiaries, and (ii) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (F) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of $50,000,000 or less: *Provided, however,* That such a bank holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or (G) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a bank holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a consequence of approval by the Board prior to January 1, 1971. In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall 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. In orders and regulations under this subsection, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern. Notwithstanding any other provision of this Act, if the Board finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such insti-

tution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing;

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this Act) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe;

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest; or

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of re-

sources, decreased or unfair competition, or conflicts of interest;

(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

(III) the bank hoding company fails to furnish the information required under clause (iii).

(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

(vi) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(C) For purposes of this paragraph, an export trading company—

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the Unites States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611-631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601-604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock or other evidences of

ownership in one or more export trading companies.

(F) For purposes of this paragraph—

(i) the term "export trading company" means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

(ii) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(iii) the term "bank holding company" shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

(iv) the term "extension of credit" shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.

In the event of the failure of the Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

(d) *Hardship exemption of company controlling one bank prior to July 1, 1968.* To the extent that such action would not be substantially at variance with the purposes of this Act and subject to such conditions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

(e) *Divestiture of nonexempt shares.* With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such

prohibitions by the subsequent repeal of such exemption, no bank holding company shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a). Any bank holding company subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such bank holding company shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

[12 USC 1843. As amended by acts of July 1, 1966 (80 Stat. 238); Dec. 31, 1970 (84 Stat. 1763); Nov. 16, 1977 (91 Stat. 1389); Nov. 10, 1978 (92 Stat. 3671); March 31, 1980 (94 Stat. 186); Oct. 8, 1982 (96 Stat. 1236); Oct. 15, 1982 (96 Stat. 1479, 1488, 1527, 1536); and Jan. 12, 1983 (96 Stat. 2511).]

SECTION 5—Administration (12 USC 1844)

(a) *Registration of bank holding company.* Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this Act. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information.

(b) *Regulations and orders.* The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof.

(c) *Reports required by Board; examinations; cost of examination.* The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.

(d) *Reports to Congress; recommendations.* Before the expiration of two years following the date of enactment of this Act, and each year thereafter in the Board's annual report to the Congress, the Board shall report to the Congress the results of the administration of this Act, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this Act, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e) *Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk.* (1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distri-

bution of the shares of the subsidiary to the shareholders of the bank holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 9 of this Act, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) *Powers of Board respecting applications, examinations, or other proceedings.* In the course of or in connection with an application, examination, investigation or other proceeding under this Act, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum: and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this Act may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it seems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or, to imprisonment for a term of not more than one year or both.

[12 USC 1844. As amended by act of Nov. 10, 1978 (92 Stat. 3646).]

[Section 6 was repealed by section 9 of the act of July 1, 1966 (80 Stat. 240).]

SECTION 7—Reservation of Rights to States (12 USC 1846)

The enactment by the Congress of the Bank Holding Company Act of 1956 shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.

SECTION 8—Penalties (12 USC 1847)

(a) Any company which willfully violates any provision of this Act, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than $1,000 for each day during which the violation continues. Any individual who willfully

participates in a violation of any provision of this Act shall upon conviction be fined not more than $10,000 or imprisoned not more than one year, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

(b) (1) Any company which violates or any individual who participates in a violation of any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty may be assessed and collected by the Board by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation: *Provided,* That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this section.

(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in section 9. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.

[12 USC 1847. As amended by acts of Nov. 10, 1978 (92 Stat. 3647) and Oct. 15, 1982 (96 Stat. 1522).]

SECTION 9—Judicial Review (12 USC 1848)

Any party aggrieved by an order of the Board under this Act may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business, or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

[12 USC 1848. As amended by acts of Aug. 28, 1958 (72 Stat. 951) and July 1, 1966 (80 Stat. 240).]

SECTION 10—Tax Provisions (12 USC 1841)

[Subsections (a) and (b) contain language added to subchapter O of chapter 1 of the Internal Revenue Code of 1954 (26 USC). This language was subsequently incorporated in the Bank Holding Company Tax Act of 1976 (see page 49), along with additional language also amending the Internal Revenue Code.]

(c) The amendments made by this section shall apply with respect to taxable years ending after the date of the enactment of this Act.

SECTION 11—Saving Provision (12 USC 1849)

(a) *General rule.* Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

(b) *Antitrust proceedings; stay of approval by Board; review de novo; judicial standards; limitations; exceptions.* The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any cash transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act. 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period of no such litigation is commenced therein, the transaction may not thereafter be attached in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

(c) *Antitrust proceedings; Board and State banking agency as party; representation by counsel.* In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 3 of this Act, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

(d) *Treatment of merger transactions consummated prior or subsequent to May 9, 1956, and not in litigation prior to July 1, 1966.* Any

acquisition, merger, or consolidation of the kind described in section 3(a) of this Act which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this amendment, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

(e) *Antitrust litigation; substantive law applicable to proceedings pending on or after July 1, 1966 with respect to merger transactions.* Any court having pending before it on or after the date of enactment of this amendment any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act shall apply the substantive rule of law set forth in section 3 of this Act.

(f) *Definition of "antitrust laws".* For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in pari materia.

[12 USC 1849. As amended by acts of July 1, 1966 (80 Stat. 240) and Dec. 31, 1970 (84 Stat. 1766) Oct. 2, 1976 (90 Stat. 1503) and Nov. 16, 1977 (91 Stat. 1390). The date of the amendment referred to in paragraphs (d) and (e) is July 1, 1966.]

SECTION 12—Separability of Provisions (12 USC 1841 note)

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Bank Holding Company Tax Act of 1976

26 USC 1101 et seq.; 90 Stat. 1503; Pub. L. 94-452 (October 2, 1976)

SECTION 1—Short Title

This Act may be cited as the "Bank Holding Company Tax Act of 1976".

SECTION 2—Distributions Pursuant to Bank Holding Company Act Amendments of 1970

(a) *Tax-Free Distributions.* Part VIII of subchapter O of chapter 1 of the Internal Revenue Code of 1954 (relating to distributions pursuant to Bank Holding Company Act of 1956) is amended to read as follows:

"Part VIII—Distribution and sales pursuant to Bank Holding Company Act of 1956

"Section
1101 Distributions pursuant to Bank Holding Company Act of 1956
1102 Special rules
1103 Definitions

"Section 1101—Distributions Pursuant to Bank Holding Company Act.

"(a) *Distribution of certain non-banking property.*

"(1) *Distribution of prohibited property.* If—

"(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c)(2) applies)—

"(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) to a shareholder, in exchange for its preferred stock, or

"(iii) to a security holder, in exchange for its securities, and

"(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

"(2) *Distributions of stock and securities received in an exchange to which subsection (c)(2) applies.* If—

"(A) a qualified bank holding corporation distributes—

"(i) common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock, or

"(iii) preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock, or

"(iv) securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder in exchange for its securities, and

"(B) any preferred stock received has substantially the same forms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

"(3) *Pro rata and other requirements.*

"(A) *In general.* Paragraphs (1) and (2) of this subsection, or paragraphs (1) and (2) of subsection (b), as the case may be, shall apply to any distribution to the shareholders of a qualified bank holding corporation only if each distribution—

"(i) which is made by such corporation to its shareholders after July 7, 1970, and on or before the date on which the Board makes its final certification under subsection (e), and

"(ii) to which such paragraph (1) or (2) applies (determined without regard to this paragraph),

meets the requirements of subparagraph (B), (C), or (D).

"(B) *Pro rata requirements.* A distribution meets the requirements of this subparagraph if the distribution is pro rata with respect to all shareholders of the distributing qualified bank holding corporation or with respect to all shareholders of common stock of such corporation.

"(C) *Redemptions when uniform offer is made.* A distribution meets the requirements of this subparagraph if the distribution is in exchange for stock of the distributing qualified bank holding corporation and such distribution is pursuant to a good faith offer made on a uniform basis to all shareholders of the distributing qualified bank holding corporation or to all shareholders of common stock of such corporation.

"(D) *Non-pro rata distributions from certain closely-held corporations.* A distribution meets the requirements of this subparagraph if such distribution is made by a qualified bank holding corporation which does not have more than 10 shareholders (within the meaning of section 1361 (b)(1)(A)) and does not have as a shareholder a person (other than an estate) which is not an individual, and if the Board (after consultation with the Secretary or his delegate) certifies that—

"(i) a distribution which meets the requirements of subparagraph (B) or (C) is not appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, and

"(ii) the distribution being made is necessary or appropriate to effectuate section 4 of the policies of such Act.

"(4) *Exception.* This subsection shall not apply to any distribution by a corporation if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation has made any distribution pursuant to subsection (b) or has made an election under section 6158 with respect to bank property (as defined in section 6158(f)(3)).

"(5) *Distributions involving gift or compensation.* In the case of a distribution to which paragraph (1) or (2) applies but which—

"(A) results in a gift, see section 2501 and following, or

"(B) has the effect of the payment of compensation, see section 61.

"(b) *Corporation ceasing to be a bank holding company.*

"(1) *Distributions of property which cause a corporation to be a bank holding company.* If—

"(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c)(3) applies)—

"(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) to a shareholder, in exchange for its preferred stock, or

"(iii) to a security holder, in exchange for its securities, and

"(B) the Board has, before the distribution, certified that—

"(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act) a bank or bank holding company, or such property is part of the property by reason of which such corporation

did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c)(3), and

"(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

"(2) *Distributions of stock and securities received in an exchange to which subsection (c)(3) applies.* If—

"(A) a qualified bank holding corporation distributes—

"(i) common stock received in an exchange to which subsection (c)(3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

"(ii) common stock received in an exchange to which subsection (c)(3) applies to a shareholder in exchange for its common stock, or

"(iii) preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock, or

"(iv) securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder, in exchange for its securities, and

"(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

"(3) *Pro rata and other requirements.* For pro rata and other requirements, see subsection (a)(3).

"(4) *Exception.* This subsection shall not apply to any distribution by a corporation if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation has made any distribution pursuant to subsection (a) or has made an election under section 6158 with respect to prohibited property.

"(5) *Distributions involving gift or compensation.* In the case of a distribution to which paragraph (1) or (2) applies but which—

"(A) results in a gift, see section 2501 and following, or

"(B) has the effect of the payment of compensation, see section 61.

"(c) *Property acquired after July 7, 1970.*

"(1) *In general.* Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

"(A) any property acquired by the distributing corporation after July 7, 1970, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss) with respect to a reorganization described in section 368(a)(1) (A), (B), (E), or (F), or

"(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after July 7, 1970, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on July 7, 1970, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection

(a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss) with respect to a reorganization described in section 368(a)(1)(A), (B), (E), or (F), or

"(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1), or

"(D) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 354 or 356 with respect to a reorganization described in section 368(a)(1) (A) or (B), unless such property was acquired by the distributing corporation in exchange for property which the distributing corporation could have distributed under subsection (a)(1) or (b)(1).

"(2) *Exchanges involving prohibited property.* If—

"(A) any qualified bank holding corporation exchanges (i) property, which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b)(1)(B)(i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property,

"(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a)(2)(A), and

"(C) before such distribution, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act,

then paragraph (1) shall not apply with respect to such distribution.

"(3) *Exchanges involving interests in bank.* If—

"(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property,

"(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b)(2)(A), and

"(C) before such distribution, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

"(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank holding company before any property of the same kind was distributed under subsection

(b)(1) or exchanged under this paragraph, and

"(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

"(d) *Distributions to avoid federal income tax.*

"(1) *Prohibited property.* Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after July 7, 1970, to any corporation, property (other than prohibited property) as part of a plan one of the principle purposes of which is the distribution of the earnings and profits of any corporation.

"(2) *Banking property.* Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after July 7, 1970, to any corporation, property (other than property described in subsection (b)(1)(B)(i)) as part of a plan one of the principle purposes of which is the distribution of the earnings and profits of any corporation.

"(e) *Final certification.*

"(1) *For subsection (a).* Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) disposed of all of the property the disposition of which is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act.

"(2) *For subsection (b).* Subsection (b) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) ceased to be a bank holding company.

"(f) *Certain exchanges of securities.* In the case of an exchange described in subsection (a)(2)(A)(iv) or subsection (b)(2)(A)(iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principle amount of the securities received does not exceed the principle amount of the securities exchanged.

"Section 1102—Special Rules

"(a) *Basis of property acquired in distributions.* If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the secretary or his delegate—

"(1) if the property is received by a shareholder with respect to stock without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock, or

"(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by the amount of gain to the taxpayer recognized on the property received.

"(b) *Periods of limitation.* The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the board under subsection (a), (b), or (c) of section 1101, until 5 years after the distributing corporation notifies the Secretary or his delegate

(in such manner and with such accompanying information as the Secretary or his delegate may by regulations prescribe)—

"(1) that the final certification required by subsection (e) of section 1101 has been made, or

"(2) that such final certification will not be made;

and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

"(c) *Allocation of earnings and profits.*

"(1) *Distribution of stock in a controlled corporation.* In the case of a distribution by a qualified bank holding corporation under section 1101 (a)(1) or (b)(1) of stock in a controlled corporation, proper allocation with respect to the earning and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary or his delegate.

"(2) *Exchanges described in section 1101 (c) (2) or (3).* In the case of any exchange described in section 1101(c) (2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary or his delegate.

"(3) *Definition of controlled corporation.* For purposes of paragraph (1), the term 'controlled corporation' means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 per cent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

"(d) *Itemization of property.* In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

"Section 1103—Definitions

"(a) *Bank holding company; Bank Holding Company Act.* For purposes of this part—

"(1) *Bank holding company.* The term 'bank holding company' means—

"(A) a bank holding company within the meaning of section 2(a) of the Bank Holding Company Act, or

"(B) a bank holding company subsidiary within the meaning of section 2(d) of such Act.

"(2) *Bank Holding Company Act.* The term 'Bank Holding Company Act' means the Bank Holding Company Act of 1956, as amended through December 31, 1970 (12 U.S.C. 1841 et seq.).

"(b) *Qualified bank holding corporation.*

"(1) *In general.* Except as provided in paragraph (2), for purposes of this part the term 'qualified bank holding corporation' means any corporation (as defined in section 7701(a)(3)) which is a bank holding company and which holds prohibited property acquired by it—

"(A) on or before July 7, 1970,

"(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

"(C) in exchange for all of its stock in an exchange described in section 1101 (c)(2) or (c)(3).

"(2) *Limitations.*

"(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on July 7, 1970, if the Bank Holding Company Act Amendment of 1970 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

"(i) property acquired by it on or before July 7, 1970,

"(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

"(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101(c)(2) or (3).

For purposes of this subparagraph, property held by a corporation having control of the corporation or by a subsidiary of the corporation shall be treated as held by the corporation.

"(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in sub-paragraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

"(i) on or before July 7, 1970,

"(ii) in a distribution (with respect to stock held by it on July 7, 1970, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

"(iii) in exchange for all of its stock in an exchange described in section 1101 (c)(2) or (3).

"(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

"(3) *Certain successor corporations.* For purposes of this subsection, a successor corporation in a reorganization described in section 368(a)(1)(F) shall succeed to the status of its predecessor corporation as a qualified bank holding corporation.

"(c) *Prohibited property.* For purposes of this part, the term 'prohibited property' means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section. The term 'prohibited property' also includes shares of any company not in excess of 5 per cent of the outstanding voting shares of such company if the prohibitions of section 4 of such Act apply to the shares of such company in excess of such 5 per cent.

"(d) *Nonexempt property.* For purposes of this part, the term 'nonexempt property' means—

"(1) obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace,

"(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision, or

"(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

"(e) *Board.* For purposes of this part, the term 'Board' means the Board of Governors of the Federal Reserve System.

"(f) *Control; subsidiary.* For purposes of this part—

"(1) *Control.* Except as provided in section 1102(c)(3), a corporation shall be treated as having control of another corporation if such corporation has control (within the meaning of section 2(a)(2) of the Bank Holding Company Act) of such other corporation.

"(2) *Subsidiary.* The term 'subsidiary' has the meaning given to such term by section 2(d) of the Bank Holding Company Act.

"(g) *Election to forego grandfather provision for all property representing pre-June 30, 1968, activities.* Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the

Bank Holding Company Act as if such Act did not contain the proviso of section 4(a)(2) thereof. Any election under this subsection shall apply to all property described in such proviso and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable. An election under this subsection or subsection (h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Board that the bank holding company has disposed of either all banking property or all nonbanking property.

"(h) *Election to divest all banking or nonbanking property in case of certain closely held bank holding companies.* Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act as if such Act did not contain clause (ii) of section 4(c) of such Act. Any election under this subsection shall apply to all property described in subsection (c), or to all property eligible to be distributed without recognition of gain under section 1101(b)(1), as the case may be, and shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe. Any such election, once made, shall be irrevocable."

(b) *Amendment of section 311(d).* Paragraph (2) of section 311(d) of such Code (relating to exceptions and limitations to the recognition of gain where appreciated property is used to redeem stock) is amended by striking out "and" at the end of subparagraph (F), by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "; and", and by adding at the end thereof the following new subparagraph:

"(H) a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a), if with respect to such distributee, subsection (a)(1) or (b)(1) of section 1101 (relating to distributions pursuant to Bank Holding Company Act) applies to such distribution."

(c) *Clerical amendment.* The table of parts for subchapter O of chapter 1 of such Code is amended by striking out "of 1956".

(d) *Effective date.*

(1) *For subsection (a).* The amendments made by subsections (a) and (c) shall take effect on October 1, 1977, with respect to distributions after July 7, 1970, in taxable years ending after July 7, 1970, but only in the case of qualified bank holding corporations (within the meaning of section 1103(b) of the Internal Revenue Code of 1954, as amended by subsection (a) of this section).

(2) *Special rule for certifying distributions which have already taken place.* For purposes of sections 1101(a)(1)(B), 1101(a)(3)(D), 1101(b)(1)(B), 1101(c)(2)(C), 1101(c)(3)(C), and 1101(e) of the Internal Revenue Code of 1954 (as amended by subsection (a) of this section), in the case of any distribution which takes place on or before the 90th day after the date of the enactment of this Act, a certification by the Federal Reserve Board described in any such section shall be treated as made before the distribution (or, in the case of section 1101(e), before the close of the calendar year following the calendar year in which the last distribution occurred) if application for such certification is made before the close of the 90th day after the date of the enactment of this Act.

(3) *Period of limitations.* If refund or credit of any overpayment of income tax attributable to the amendment made by subsection (a) is prevented at any time before October 1, 1978, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before October 1, 1978.

(4) *For subsection (b).* The amendment made by subsection (b) shall take effect on October 1, 1977, with respect to distributions after December 31, 1975, in taxable years ending after December 31, 1975.

SECTION 3—Instalment Payment of Tax

(a) *Instalment payment.* Subchapter A of chapter 62 of the Internal Revenue Code of 1954 (relating to place and due date for payment of tax) is amended by adding at the end thereof the following new section:

"Section 6158—Instalment Payment of Tax Attributable to Divestitures Pursuant to Bank Holding Company Act Amendments of 1970

"(a) *Election of extension.* If, after July 7, 1970, a qualified bank holding corporation sells bank property or prohibited property, the divestiture of either of which the Board certifies, before such sale, is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, the tax under chapter 1 attributable to such sale shall, at the election of the taxpayer, be payable in equal annual instalments beginning with the due date (determined without extension) for the taxpayer's return of tax under chapter 1 for the taxable year in which the sale occurred and ending with the corresponding date in 1985. If the number of instalments determined under the preceding sentence is less than 10, such number shall be increased to 10 equal annual instalments which begin as provided in the preceding sentence and which end on the corresponding date 10 years later. An election under this subsection shall be made at such time and in such manner as the Secretary or his delegate may by regulations prescribe.

"(b) *Limitations.*

"(1) *Treatment not Available to Taxpayer for Both Bank Property and Prohibited Property.* This section shall not apply to any sale of prohibited property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the taxpayer) has made an election under subsection (a) with respect to bank property or has made any distribution pursuant to section 1101(b). This section shall not apply to bank property if the taxpayer (or a corporation having control of the taxpayer or a subsidiary of the taxpayer) has made an election under subsection (a) with respect to prohibited property or has made any distribution pursuant to section 1101(a).

"(2) *Treatment not available for certain instalment sales.* No election may be made under subsection (a) with respect to a sale if the income from such sale is being returned at the time and in the manner provided in section 453 (relating to instalment method).

"(c) *Acceleration of payments.* If an election is made under subsection (a) and before the tax attributable to such sale is paid in full—

"(1) any instalment under this section is not paid on or before the date fixed by this section for its payment, or

"(2) the Board fails to make a certification similar to the applicable certification provided in section 1101(e) within the time prescribed therein (for this purpose treating the last such sale as constituting the last distribution),

then the extension of time for payment of tax provided in this section shall cease to apply, and any portion of the tax payable in instalments shall be paid on notice and demand from the Secretary or his delegate.

"(d) *Proration of deficiency to instalments.* If an election is made under subsection (a) and a deficiency attributable to the sale has been assessed, the deficiency shall be prorated to such instalments. The part of the deficiency so prorated to any instalment the date for payment of which has not arrived shall be collected at the same time as, and as part of, such instalment. The part of the deficiency so prorated to any instalment the date for payment of which has arrived shall be paid on notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

"(e) *Bond may be required.* If an election is made under this section, section 6165

shall apply as though the Secretary were extending the time for payment of the tax.

"(f) *Definitions.* For purposes of this section—

"(1) *Terms have meanings given to them by section 1103.* The terms 'qualified bank holding corporation', 'Bank Holding Company Act', 'Board'; 'control', and 'subsidiary' have the respective meanings given to such terms by section 1103.

"(2) *Prohibited property.* The term 'prohibited property' means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(a)(1).

"(3) *Bank property.* The term 'bank property' means property held by a qualified bank holding corporation which could be distributed without recognition of gain under section 1101(b)(1).

"(g) *Cross references.*

"(1) *Security.* For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

"(2) *Period of limitation.* For extension of the period of limitation in the case of an extension under this section, see section 6503(i)."

(b) *Extension of time for collection of tax.* Section 6503 of such Code (relating to suspension of running of period of limitation) is amended by redesigning subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) *Extension of time for collecting tax attributable to divestitutes pursuant to Bank Holding Company Act Amendments of 1970.* The running of the period of limitations for collection of the tax attributable to a sale with respect to which the taxpayer makes an election under section 6158(a) shall be suspended for the period during which there are any unpaid instalments of such tax."

(c) *Technical amendments.*

(1) The table of sections for subchapter A of chapter 62 of such Code is amended by adding at the end thereof the following new item:

"Section 6158—Instalment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970."

(2) Subsection (a) of section 6151 of such Code (relating to time and place for paying tax shown on returns) is amended by striking out "section," and inserting in lieu thereof "subchapter,".

(3) Paragraph (2) of section 6601(b) of such Code (relating to interest) is amended—

(A) by striking out "or 6156(a)" and inserting in lieu thereof ", 6156(a), or 6158(a)",

(B) by striking out "or 6156(b)" and inserting in lieu thereof ", 6156(b), or 6158(a)"; and

(C) by inserting at the end thereof the following new sentence:

"For purposes of subparagraph (A), section 6158(a) shall be treated as providing that the date prescribed for payment of each instalment shall not be later than the date prescribed for payment of the 1985 instalment."

(d) *Applicability to certain successor corporations.* If, after July 7, 1970, and before August 1, 1974—

(1) a corporation acquires substantially all of the properties of a qualified bank holding corporation (as defined in section 1103(b) of the Internal Revenue Code of 1954) in a transaction described in sections 368(a)(1)(A) and 368(a)(2)(D), and

(2) the acquiring corporation (or a corporation in control of the acquiring corporation) acquires beneficial interests in shares described in section 2(g)(2) of the Bank Holding Company Act (as defined in section 1103(a)(2) of the Internal Revenue Code of 1954) in a transaction to which section 351 applies,

then, the acquiring corporation (or a corporation which is in control (within the meaning of section 2(a)(2) of such Act) of the acquiring corporation or a subsidiary (within the meaning of section 2(d) of such Act) of the

corporation so in control) shall be treated as a qualified bank holding corporation for purposes of section 1103(b) and 6158 of the Internal Revenue Code of 1954 and the shares described in such section 2(g)(2) shall be considered property which is acquired by such corporation, for purposes of section 1101(c)(1)(A)(iii) of the Internal Revenue Code of 1954, after July 7, 1970.

(e) *Effective dates.*

(1) *In general.* The amendments made by this section shall take effect on October 1, 1977, with respect to sales after July 7, 1970, in taxable years ending after July 7, 1970, but only in the case of qualified bank holding corporations (within the meaning of section 1103(b) of the Internal Revenue Code of 1954, as amended by section 2(a) of this Act).

(2) *Special rule for certifying sales which have already taken place.* For purposes of section 6158(a) of the Internal Revenue Code of 1954 (as added by subsection (a) of this section) in the case of any sale which takes place on or before the 90th day after the date of the enactment of this Act, a certification by the Federal Reserve Board described in section 6158(a) shall be treated as made before the sale if application for such certification is made before the close of the 90th day after the date of the enactment of this Act.

(3) *Refund of tax.*

(A) *In general.* If any tax attributable to a sale which occurred before October 1, 1977, is payable in annual instalments by reason of an election under section 6158(a) of the Internal Revenue Code of 1954, any portion of such tax for which the due date of the instalment does not occur before October 1, 1977, shall, on application of the taxpayer, be treated as an overpayment of tax.

(B) *Interest on overpayments.* For purposes of section 6611(b), in the case of any overpayment attributable to subparagraph (A), the date of the overpayment shall be the day which is 6 months after the latest of the following:

(i) the date on which application for refund or credit of such overpayment is filed,

(ii) the due date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 of the Internal Revenue Code of 1954 for the taxable year the tax of which is being refunded or credited, or

(iii) the date of the enactment of this Act.

(C) *Extension of period of limitations.* If any refund or credit of tax attributable to the application of subparagraph (A) is prevented at any time before October 1, 1978, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before October 1, 1978.

SECTION 105—Party in Interest

With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 3 of the Bank Holding Company Act of 1956, to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act, or to engage in an activity otherwise prohibited under section 106 of this Act, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 9 of such Act of 1956 or as otherwise provided by law.

[12 USC 1850.]

SECTION 106—Definitions

(a) As used in this section, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 2 of the Bank Holding Company Act of 1956. For purposes of this section only, the term "company", as used in section 2 of the Bank Holding Company Act of 1956, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department.

[12 USC 1971.]

(b) *Certain tie-in arrangements; prohibition; exceptions.* (1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition as it considers will not be contrary to the purposes of this section.

(2) (A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the

normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other persons who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account, or to any related interest of such person, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another Bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank, or to any related interest of such person shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term "extension of credit" shall have the meaning prescribed by the Board pursuant to section 22(h) of the Federal Reserve Act (12 USC 375b), and the term "executive officer" shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

(F) (i) Any bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates any provision of section 106(b)(2) shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided,* That the agency having authority to impose a civil money penalty may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, or the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counselling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous viola-

tions, and such other matters as justice may require.

(iii) The bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subsection (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days from the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be. The Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706 (2) (E) of title 5, United States Code.

(v) If any bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) The Comptroller of the Currency, the Board and the Federal Deposit Insurance Corporation shall promulgate regulations establishing procedures necessary to implement this section.

(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(G) (i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintains a corresponding account in the name of such bank. Such report shall include the following information:

(*1*) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer of stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

(*2*) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stock-

holder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

(*3*) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

(*4*) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.

(H) For the purpose of this paragraph—

(i) the term "bank" includes a mutual savings bank;

(ii) the term "related interests of such persons" includes any company controlled by such executive officer, director, or person, or any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person; and

(iii) the terms "control of a company" and "company" have the same meaning as under section 22 (h) of the Federal Reserve Act (12 USC 375b).

[12 USC 1972. As amended by acts of Nov. 10, 1978 (92 Stat. 3690) and Oct. 15, 1982 (96 Stat. 1520, 1523, 1526).]

(c) *Jurisdiction of courts; duty of U.S. attorneys; equitable proceedings; petition; expedition of cases; temporary restraining orders; bringing in additional parties; subpoenas.* The district courts of the United States have jurisdiction to prevent and restrain violations of subsection (b) of this section and it is the duty of the United States attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. The proceedings may be by way of a petition setting forth the case and praying that the violation be enjoined or otherwise prohibited. When the parties complained of have been duly notified of the petition, the court shall proceed, as soon as possible, to the hearing and determination of the case. While the petition is pending, and before final decree, the court may at any time make such temporary restraining order or prohibition as it deems just. Whenever it appears to the court that the ends of justice require that other parties be brought before it, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and subpoenas to that end may be served in any district by the marshal thereof.

[12 USC 1973.]

(d) *Actions by United States; subpoenas for witnesses.* In any action brought by or on behalf of the United States under subsection (b), subpoenas for witnesses may run into any district, but no writ of subpoena may issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the prior permission of the trial court upon proper application and cause shown.

[12 USC 1974.]

(e) *Civil actions by persons injured; jurisdiction and venue; amount of recovery.* Any person who is injured in his business or property by reason of anything forbidden in subsection (b) may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover three times the amount of the damages sustained by him and the cost of suit, including a reasonable attorney's fee.

[12 USC 1975.]

(f) *Injunctive relief of persons against threatened loss or damages; equitable proceedings; preliminary injunctions.* Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the

parties, against threatened loss or damage by reason of a violation of subsection (b), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

[12 USC 1976.]

(g) *Limitation of actions; suspension of limitations.* (1) Subject to paragraph (2), any action to enforce any cause of action under this section shall be forever barred unless commenced within four years after the cause of action accrued.

(2) Whenever any enforcement action is instituted by or on behalf of the United States with respect to any matter which is or could be the subject of a private right of action under this section, the running of the statute of limitations in respect of every private right of action arising under this section and based in whole or in part on such matter shall be suspended during the pendency of the enforcement action so instituted and for one year thereafter: *Provided,* That whenever the running of the statute of limitations in respect of a cause of action arising under this section is suspended under this paragraph, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within the four-year period referred to in paragraph (1).

[12 USC 1977.]

(h) *Actions under other Federal or State laws unaffected; regulations or orders barred as a defense.* Nothing contained in this section shall be construed as affecting in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this section. No regulation or order issued by the Board under this section shall in any manner constitute a defense to such action.

[12 USC 1978.]

Board of Governors of the Federal Reserve System

AT 9671(a)

Regulation O
Loans to Executive Officers, Directors and Principal Shareholders of Member Banks

12 CFR 215; as amended effective December 31, 1983

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

February 1984

Contents

Regulation O
Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks*

12 CFR 215; as amended effective December 31, 1983

SUBPART A—LOANS BY MEMBER BANKS TO THEIR EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS

SECTION 215.1—Authority, Purpose, and Scope

(a) *Authority.* This subpart is issued pursuant to sections 11(i), 22(g) and 22(h) of the Federal Reserve Act (12 USC 248(i), 375a, 375b(7)) and 12 USC 1817(k)(3).

(b) *Purpose and scope.* This subpart governs any extension of credit by a member bank to an executive officer, director, or principal shareholder of (1) the member bank, (2) a bank holding company of which the member bank is a subsidiary, and (3) any other subsidiary of that bank holding company. It also applies to any extension of credit by a member bank to (1) a company controlled by such a person and (2) a political or campaign committee that benefits or is controlled by such a person. This subpart also implements the reporting requirements of 12 USC 375a concerning extensions of credit by a member bank to its executive officers and of 12 USC 1817(k) concerning extensions of credit by a member bank to its executive officers and principal shareholders.

SECTION 215.2—Definitions

For the purpose of this subpart, the following definitions apply unless otherwise specified:

(a) *"Company"* means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of business entity not specifically listed herein. However, the term does not include (1) an insured bank (as defined in 12 USC 1813(h)) or (2) a corporation the majority of the shares of which are owned by the United States or by any state.

(b)(1) *"Control of a company or bank"* means that a person directly or indirectly, or acting through or in concert with one or more persons:

(i) owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company or bank;

(ii) controls in any manner the election of a majority of the directors of the company or bank; or

(iii) has the power to exercise a controlling influence over the management or policies of the company or bank.

(2) A person is presumed to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank if:

(i) the person is (A) an executive officer or director of the company or bank and (B) directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; or

(ii) (A) the person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank, and (B) no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(3) An individual is not considered to have control, including the power to exercise a controlling influence over the management or policies, of a company or bank solely by virtue of the individual's position as an officer or director of the company or bank.

(4) A person may rebut a presumption established by paragraph (b)(2) of this section by submitting to the appropriate federal banking agency (as defined in 12 USC 1813(q)) written materials that, in the

* The words "this part," as used herein, mean Regulation O (Code of Federal Regulations, title 12, chapter II, part 215).

agency's judgment, demonstrate an absence of control.

(c) *"Director of a member bank"* includes (1) any director of a member bank, whether or not receiving compensation, (2) any director of a bank holding company (as defined in 12 USC 1841(a)) of which the member bank is a subsidiary, and (3) any director of any other subsidiary of that bank holding company. An advisory director is not considered a director if the advisory director (1) is not elected by the shareholders of the company or bank, (2) is not authorized to vote on matters before the board of directors, and (3) provides solely general policy advice to the board of directors.

(d) *"Executive officer"* of a company or bank means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the company or bank, whether or not: (1) the officer has an official title, (2) the title designates the officer an assistant, or (3) the officer is serving without salary or other compensation.[1] The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless (1) the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company, from participation (other than in the capacity of a director) in major policymaking functions of the bank or company, and (2) the officer does not actually participate therein. For the purpose of sections 215.4 and 215.7 below, an executive officer of a member bank includes an executive officer of (1) a bank holding company (as defined in 12 USC 1841(a)) of which the member bank is a subsidiary, and (2) any other subsidiary of that bank holding company, unless the executive officer of the subsidiary (i) is excluded (by name or by title) from participation in major policymaking functions of the member bank by resolutions of the boards of directors of both the subsidiary and the member bank, and (ii) does not actually participate in such major policymaking functions.

(e) *"Immediate family"* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(f) The *"lending limit"* for a member bank is an amount equal to the limit on loans to a single borrower established by section 5200 of the Revised Statutes,[2] 12 USC 84. This amount is 15 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan. The lending limit also includes any higher amounts that are permitted by section 5200 of the Revised Statutes for the types of obligations listed therein as exceptions to the limit. A member bank's capital stock and unimpaired surplus equals the sum of (1) the "total equity capital" of the member bank reported on its most recent consolidated report of condition filed under 12 USC 1817(a)(3), (2) any subordinated notes and debentures approved as an addition to the member bank's capital struction by the appropriate federal banking agency, and (3) any valuation reserves created by charges to the member bank's income.

(g) *"Member bank"* means any banking institution that is a member of the Federal Reserve System. The term does not include any foreign bank (as defined in 12 USC 3101(7)) that maintains a branch in the United States, whether or not the branch is insured (within the meaning of 12 USC 1813(s)) and regard-

[1] The term is not intended to include persons who may have official titles and may exercise a certain measure of discretion in the performance of their duties, including discretion in the making of loans, but who do not participate in the determination of major policies of the bank or company and whose decisions are limited by policy standards fixed by the senior management of the bank or company. For example, the term does not include a manager or assistant manager of a branch of a bank unless that individual participates, or is authorized to participate, in major policymaking functions of the bank or company.

[2] Where state law establishes a lending limit for a state member bank that is lower than the amount permitted in section 5200 of the Revised Statutes, the lending limit established by applicable state laws shall be the lending limit for the state member bank.

less of the operation of 12 USC 1813(h) and 12 USC 1828(j)(2).

(h) *"Pay an overdraft on an account"* means to pay an amount upon the order of an ac count holder in excess of funds on deposit in the account.

(i) *"Person"* means an individual or a company.

(j) *"Principal shareholder"* means an individual or a company (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. However, for the purposes of section 215.4(c) below, this percentage shall be "more than 18 percent" if the member bank is located in a city, town, or village with a population of less than 30,000. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual. A principal shareholder of a member bank includes (1) a principal shareholder of a bank holding company (as defined in 12 USC 1841(a)) of which the member bank is a subsidiary and (2) a principal shareholder of any other subsidiary of that bank holding company.

(k) *"Related interest"* means (1) a company that is controlled by a person or (2) a political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

(*l*) *"Subsidiary"* has the meaning given in 12 USC 1841(d), but does not include a subsidiary of a member bank.

SECTION 215.3—Extension of Credit

(a) An extension of credit is a making or renewal of any loan, a granting of a line of credit or an extending of credit in any manner whatsoever, and includes:

(1) a purchase under repurchase agreement of securities, other assets, or obligations;

(2) an advance by means of an overdraft, cash item, or otherwise;

(3) issuance of a standby letter of credit (or other similar arrangement regardless of name or description) or an ineligible acceptance, as those terms are defined in section 208.8(d) of this chapter;

(4) an acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a person may be liable as maker, drawer, endorser, guarantor, or surety;

(5) a discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse; but the acquisition of such paper by a member bank from another bank, without recourse, shall not be considered a discount by the member bank for the other bank;

(6) an increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (i) accrued interest or (ii) taxes, insurance, or other expenses incidental to the existing indebtedness;

(7) an advance of unearned salary or other unearned compensation for a period in excess of 30 days; and

(8) any other transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(b) An extension of credit does not include:

(1) an advance against accrued salary or other accrued compensation, or an advance for the payment of authorized travel or other expenses incurred or to be incurred on behalf of the bank;

(2) a receipt by a bank of a check deposited in or delivered to the bank in the usual course of business unless it results in the carrying of a cash item for or the granting of an overdraft (other than an inadvertent overdraft in a limited amount that is promptly repaid, as described in section 215.4(d) below);

(3) an acquisition of a note, draft, bill of exchange, or other evidence of indebtedness through (i) a merger or consolidation of

banks or a similar transaction by which a bank acquires assets and assumes liabilities of another bank or similar organization or (ii) foreclosure on collateral or similar proceeding for the protection of the bank, provided that such indebtedness is not held for a period of more than three years from the date of the acquisition, subject to extension by the appropriate federal banking agency for good cause;

(4) (i) an endorsement or guarantee for the protection of a bank of any loan or other asset previously acquired by the bank in good faith or (ii) any indebtedness to a bank for the purpose of protecting the bank against loss or of giving financial assistance to it; or

(5) indebtedness of $5,000 or less arising by reason of any general arrangement by which a bank (i) acquires charge or time credit accounts or (ii) makes payments to or on behalf of participants in a bank credit card plan, check credit plan, interest bearing overdraft credit plan, of the type specified in section 215.4(d) below, or similar open-end credit plan, provided: (A) the indebtedness does not involve prior individual clearance or approval by the bank other than for the purposes of determining authority to participate in the arrangement and compliance with any dollar limit under the arrangement, and (B) the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(c) Non-interest-bearing deposits to the credit of a bank are not considered loans, advances, or extensions of credit to the bank of deposit; nor is the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business considered to be a loan, advance, or extension of credit to the depositing bank.

(d) For purposes of sections 215.4(b) and (c) below, an extension of credit by a member bank is considered to have been made at the time the bank enters into a binding commitment to make the extension of credit.

(e) A participation without recourse is considered to be an extension of credit by the participating bank, not by the originating bank.

(f) An extension of credit is considered made to a person covered by this part to the extent that the proceeds of the extension of credit are used for the tangible economic benefit of, or are transferred to, such a person.

SECTION 215.4—General Prohibitions

(a) *Terms and creditworthiness.* No member bank may extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of that person unless the extension of credit: (1) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this part and who are not employed by the bank, and (2) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) *Prior approval.* (1) No member bank may extend credit (which term includes granting a line of credit) to any of its executive officers, directors, or principal shareholders or to any related interest of that person in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of $25,000 or 5 percent of the member bank's capital and unimpaired surplus, unless:

(i) the extension of credit has been approved in advance by a majority of the entire board of directors of that bank, and

(ii) the interested party has abstained from participating directly or indirectly in the voting. In no event may a member bank extend credit to any one of its executive officers, directors, or principal shareholders, or to any related interest of that person, in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds $500,000, except by complying with the requirements of this paragraph.

(2) Approval by the board of directors under paragraph (b)(1) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (b)(1) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of section 215.4(a) above.

(3) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

(c) *Aggregate lending limit.* No member bank may extend credit to any of its executive officers or principal shareholders or to any related interest of that person[3] in an amount that, when aggregated with the amount of all other extensions of credit by the member bank to that person and to all related interests of that person, exceeds the lending limit of the member bank specified in secton 215.2(f) above. This prohibition does not apply to an extension of credit by a member bank to a bank holding company (as defined in 12 USC 1841(a)) of which the member bank is a subsidiary or to any other subsidiary of that bank holding company.

(d) *Overdrafts.* No member bank may pay an overdraft of an executive officer or director of the bank[4] on an account at the bank, unless the payment of funds is made in accordance with (1) a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or (2) a written, preauthorized transfer of funds from another account of the account holder at the bank. This prohibition does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less, provided (1) the account is not overdrawn for more than five business days, and (2) the member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

SECTION 215.5—Additional Restrictions on Loans to Executive Officers of Member Banks

(a) No member bank may extend credit to any of its executive officers,[5] and no executive officer of a member bank shall borrow from or otherwise become indebted to the bank, except in the amounts, for the purposes, and upon the conditions specified in paragraphs (c) and (d) of this section.

(b) No member bank may extend credit in an aggregate amount greater than the amount permitted in paragraph (c)(3) of this section to a partnership in which one or more of the bank's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(3) below, the total amount of credit extended by a member bank to such partnership is considered to be extended to each executive officer of the member bank who is a member of the partnership.

(c) A member bank is authorized to extend credit to any executive officer of the bank—

(1) in any amount to finance the education of the executive officer's children;

(2) in any amount to finance the purchase, construction, maintenance, or improvement of a residence of the executive officer, if the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer; and

(3) for any other purpose not specified in section 215.5(c)(1) and (2), if the aggre-

[3] This prohibition does not apply to member bank loans to a director of the member bank or to a related interest of the director, unless the director is also an executive officer or principal shareholder. See also the definition of principal shareholder in section 215.2(j) above, in the case of a member bank located in a city, town or village with a population of less than 30,000.

[4] This prohibition does not apply to the payment by a member bank of an overdraft of a principal shareholder of the member bank , unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank.

[5] Sections 215.5, 215.8, and 215.9 of Regulation O implement section 22(g) of the Federal Reserve Act and do not apply to nonmember banks. For the purposes of these sections, an executive officer of a member bank does not include an executive officer of a bank holding company of which the member bank is a subsidiary or any other subsidiary of that bank holding company.

gate amount of loans to that officer under this paragraph does not exceed at any one time the higher of 2.5 percent of the bank's capital and unimpaired surplus or $25,000, but in no event more than $100,000.

(d) Any extension of credit by a member bank to any of its executive officers shall be: (1) promptly reported to the member bank's board of directors; (2) in compliance with the requirements of section 215.4(a) above; (3) preceded by the submission of a detailed current financial statement of the executive officer; and (4) made subject to the condition that the extension of credit will, at the option of the member bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in paragraph (c) of this section.

SECTION 215.6—Extensions of Credit Outstanding on March 10, 1979

(a) Any extension of credit that was outstanding on March 10, 1979, and that would, if made on or after March 10, 1979, violate section 215.4(c) above, shall be reduced in amount by March 10, 1980, to be in compliance with the lending limit in section 215.4(c). Any renewal or extension of such an extension of credit on or after March 10, 1979, shall be made only on terms that will bring the extension of credit into compliance with the lending limit of section 215.4(c) by March 10, 1980. However, any extension of credit made before March 10, 1979, that bears a specific maturity date of March 10, 1980, or later, shall be repaid in accordance with its repayment schedule in existence on or before March 10, 1979.

(b) If a member bank is unable to bring all extensions of credit outstanding on March 10, 1979, into compliance as required by paragraph (a) of this section, the member bank shall promptly report that fact to the Comptroller of the Currency, in the case of a national bank, or to the appropriate Federal Reserve Bank, in the case of a state member bank, and explain the reasons why all the extensions of credit cannot be brought into compliance. The Comptroller or the Reserve Bank, as the case may be, is authorized, on the basis of good cause shown, to extend the March 10, 1980, date for compliance for any extension of credit for not more than two additional one-year periods.

SECTION 215.7—Records of Member Banks

Each member bank shall maintain records necessary for compliance with the requirements of this part. These records shall (a) identify all executive officers, directors, and principal shareholders of the member bank and the related interests of these persons and (b) specify the amount and terms of each extension of credit by the member bank to these persons and to their related interests. Each member bank shall request at least annually that each executive officer, director, or principal shareholder of the member bank identify the related interests of that person.

SECTION 215.8—Reports by Executive Officers

Each executive officer[6] of a member bank who becomes indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in section 215.5(c) above, shall, within 10 days of the date the indebtedness reaches such a level, make a written report to the board of directors of the officer's bank. The report shall state the lender's name, the date and amount of each extension of credit, any security for it, and the purposes for which the proceeds have been or are to be used.

SECTION 215.9—Report on Credit to Executive Officers

Each member bank shall include with (but not as part of) each report of condition (and copy thereof) filed pursuant to 12 USC

[6] See note 5.

1817(a)(3) a report of all extensions of credit made by the member bank to its executive officers[7] since the date of the bank's previous report of condition.

SECTION 215.10—Disclosure of Credit from Member Banks to Executive Officers and Principal Shareholders

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) "Principal shareholder of a member bank" means any person[8] (other than an insured bank, or a foreign bank as defined in 12 USC 3101(7)) that, directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (e.g., a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

(2) "Related interest" means (A) any company controlled by a person or (B) any political or campaign committee the funds or services of which will benefit a person or that is controlled by a person. For the purpose of this section and subpart B, a related interest does not include a bank or a foreign bank (as defined in 12 USC 3101(7)).

(b) *Public disclosure.* (i) Upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers[9] and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or $500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding at such time from the member bank to the executive officer or principal shareholder of the member bank and to all related interests of such a person does not exceed $25,000.

(ii) A member bank is not required to disclose the specific amounts of individual extensions of credit.

(c) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (b) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

SECTION 215.11—Civil Penalties

As specified in section 29 of the Federal Reserve Act (12 USC 504), any member bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this subpart (other than section 215.10) is subject to a civil penalty of not more than $1,000 per day for each day during which the violation continues.

SUBPART B—REPORTS ON INDEBTEDNESS OF EXECUTIVE OFFICERS AND PRINCIPAL SHAREHOLDERS TO CORRESPONDENT BANKS

SECTION 215.20—Authority, Purpose, and Scope

(a) *Authority.* This subpart is issued pursuant

[7] See note 5.

[8] The term "stockholder of record" appearing in 12 USC 1972(2)(G) is synonymous with the term "person."

[9] For purposes of this section and subpart B, an executive officer of a member bank does not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless the executive officer is also an executive officer of the member bank.

to section 11(i) of the Federal Reserve Act (12 USC 248(i) and 12 USC 1972(2)(F)-(vi)).

(b) *Purpose and scope.* This subpart implements the reporting requirements of title VIII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA) (Pub. L. 95-630), as amended by the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320), 12 USC 1972(2) (G). Title VIII prohibits (1) preferential lending by a bank to executive officers, directors, and principal shareholders of another bank when there is a correspondent account relationship between the banks, and (2) the opening of a correspondent account relationship between banks when there is a preferential extension of credit by one of the banks to an executive officer, director, or principal shareholder of the other bank.

SECTION 215.21—Definitions

For the purposes of this subpart, the following definitions apply unless otherwise specified:

(a) *"Bank"* has the meaning given in 12 USC 1841(c), and includes a branch or agency of a foreign bank, or a commercial lending company controlled by a foreign bank or by a company that controls a foreign bank, where the branch or agency is maintained in a state of the United States or in the District of Columbia or the commerical lending company is organized under state law.

(b) *"Company," "control of a company or bank," "executive officer,"*[10] *"extension of credit," "immediate family,"* and *"person"* have the meanings provided in subpart A.

(c) *"Correspondent account"* is an account that is maintained by a bank with another bank for the deposit or placement of funds. A correspondent account does not include:

(1) time deposits at prevailing market rates, and

(2) an account maintained in the ordinary course of business solely for the purpose of effecting federal funds transactions at prevailing market rates or making Eurodollar placements at prevailing market rates.

(d) *"Correspondent bank"* means a bank that maintains one or more correspondent accounts for a member bank during a calendar year that in the aggregate exceed an average daily balance during that year of $100,000 or 0.5 percent of such member bank's total deposits (as reported in its first consolidated report of condition during that calendar year), whichever amount is smaller.

(e) *"Principal shareholder"* and *"related interest"* have the meanings provided in section 215.10 of subpart A.

SECTION 215.22—Report by Executive Officers and Principal Shareholders

(a) *Annual report.* If during any calendar year an executive officer or principal shareholder of a member bank or a related interest of such a person has outstanding an extension of credit from a correspondent bank of the member bank, the executive officer or principal shareholder shall, on or before January 31 of the following year, make a written report to the board of directors of the member bank.[11]

(b) *Contents of report.* The report required by this section shall include the following information:

(1) the maximum amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests to each of the member banks's correspondent banks during the calendar year;

(2) the amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests outstanding to each of the member bank's correspondent banks as of 10 business days

[10] See note 9.

[11] Persons reporting under this section are not required to include information on extensions of credit that are fully described in a report by a person they control or a person that controls them, provided they identify their relationships with such other person.

before the report required by this section is filed;[12] and

(3) a description of the terms and conditions (including the range of interest rates, the original amount and date, maturity date, payment terms, security, if any, and any other unusual terms or conditions) of each extension of credit included in the indebtedness reported under paragraph (b)(1) of this section.

(c) *Definitions.* For the purposes of this section:

(1) "Indebtedness" means an extension of credit, but does not include:

(i) commercial paper, bonds, and debentures issued in the ordinary course of business; and

(ii) consumer credit (as defined in 12 CFR 226.2(p)) in an aggregate amount of $5,000 or less from each of the member bank's correspondent banks, provided the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(2) "Maximum amount of indebtedness" means, at the option of the reporting person, either (i) the highest outstanding indebtedness during the calendar year for which the report is made, or (ii) the highest end of the month indebtedness outstanding during the calendar year for which the report is made.

(d) *Retention of reports at member banks.* The reports required by this section shall be retained at the member bank for a period of three years. The Reserve Bank or the Comptroller, as the case may be, may require these reports to be retained by the bank for an additional period of time. The reports filed under this section are not required by this regulation to be made available to the public and shall not be filed with the Reserve Bank or the Comptroller unless specifically requested.

[12] If the amount of indebtedness outstanding to a correspondent bank 10 days before the filing of the report is not available or cannot be readily ascertained, an estimate of the amount of indebtedness may be filed with the report, provided that the report is supplemented within the next 30 days with the actual amount of indebtedness.

(e) *Member bank's responsibility.* Each member bank shall advise each of its executive officers and each of its principal shareholders (to the extent known by the bank) of the reports required by this section and make available to each of these persons a list of the names and addresses of the member bank's correspondent banks.

SECTION 215.23—Disclosure of Credit from Correspondent Banks to Executive Officers and Principal Shareholders

(a) *Public disclosure.* (i) Upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, any correspondent bank of the member bank had outstanding, at any time during the previous calendar year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from all correspondent banks of the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or $500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding from all correspondent banks of the member bank to the executive officer or principal shareholder of the member bank and to all related interests of such a person does not exceed $25,000 at any time during the previous calendar year.

(ii) A member bank is not required to disclose the specific amounts of individual extensions of credit.

(b) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (a) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

Revised Statutes

SECTION 5200

(a)(1) The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) For the purposes of this section—

(1) the term "loans and extensions of credit" shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and, to the extent specified by the Comptroller of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(2) the term "person" shall include an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(c) The limitations contained in subsection (a) shall be subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any

financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(8)(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2).

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(9)(A) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a maximum limitation equal to 25 per centum of such capital and surplus.

(B) Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a limitation of 25 per centum of such capital and surplus.

(10) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

(d)(1) The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section, including rules or regulations to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(2) The Comptroller of the Currency also shall have authority to determine when a loan putatively made to a person shall for purposes of this section be attributed to another person.

[12 USC 84. As amended by acts of June 22, 1906 (34 Stat. 451); Sept. 24, 1918 (40 Stat. 967); Oct. 22, 1919 (41 Stat. 296); Feb. 25, 1927 (44 Stat. 1229); May 20, 1933 (48 Stat. 72); June 16, 1933 (48 Stat. 191); Aug. 23, 1935 (49 Stat. 713); June 11, 1942 (56 Stat. 356); July 15, 1949 (63 Stat. 440); Aug. 25, 1958 (72 Stat. 841); Sept. 9, 1959 (72 Stat. 488); Sept. 28, 1962 (76 Stat. 672); Joint Resolution of May 25, 1967 (81 Stat. 29); June 23, 1972 (86 Stat. 270); Oct. 15, 1982 (96 Stat. 1508); and Jan. 12, 1983 (96 Stat. 2509).]

FEDERAL RESERVE ACT

SECTION 22—Offenses of Examiners, Member Banks, Officers, and Directors

* * * * *

(g)(1) Except as authorized under this subsection, no member bank may extend credit in any manner to any of its own executive officers. No executive officer of any member bank may become indebted to that member bank except by means of an extension of credit which the bank is authorized to make under this subsection. Any extension of credit under this subsection shall be

promptly reported to the board of directors of the bank, and may be made only if—

(A) the bank would be authorized to make it to borrowers other than its officers;

(B) it is on terms not more favorable than those afforded other borrowers;

(C) the officer has submitted a detailed current financial statement; and

(D) it is on condition that it shall become due and payable on demand of the bank at any time when the officer is indebted to any other bank or banks on account of extensions of credit of any one of the three categories respectively referred to in paragraphs (2), (3), and (4) in an aggregate amount greater than the amount of credit of the same category that could be extended to him by the bank of which he is an officer.

(2) With the specific prior approval of its board of directors, a member bank may make a loan to any executive officer of the bank if, at the time the loan is made—

(A) it is secured by a first lien on a dwelling which is expected, after the making of the loan, to be owned by the officer and used by him as his residence, and

(B) no other loan by the bank to the officer under authority of this paragraph is outstanding.

(3) A member bank may make extensions of credit to any executive officer of the bank, to finance the education of the children of the officer.

(4) A member bank may make extensions of credit not otherwise specifically authorized under this subsection to any executive officer of the bank, in an amount prescribed in a regulation of the member bank's appropriate Federal banking agency.

(5) Except to the extent permitted under paragraph (4), a member bank may not extend credit to a partnership in which one or more of its executive officers are partners having either individually or together a majority interest. For the purposes of paragraph (4), the full amount of any credit so extended shall be considered to have been extended to each officer of the bank who is a member of the partnership.

(6) Whenever an executive officer of a member bank becomes indebted to any bank or banks (other than the one of which he is an officer) on account of extensions of credit of any one of the three categories respectively referred to in paragraphs (2), (3), and (4) in an aggregate amount greater than the aggregate amount of credit of the same category that could lawfully be extended to him by the bank, he shall make a written report to the board of directors of the bank, stating the date and amount of each such extension of credit, the security therefor, and the purposes for which the proceeds have been or are to be used.

(7) This subsection does not prohibit any executive officer of a member bank from endorsing or guaranteeing for the protection of the bank any loan or other asset previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it.

(8) Each day that any extension of credit in violation of this subsection exists is a continuation of the violation for the purposes of section 8 of the Federal Deposit Insurance Act.

(9) Each member bank shall include with (but not as part of) each report of condition and copy thereof filed under section 7(a)(3) of the Federal Deposit Insurance Act a report of all loans under authority of this subsection made by the bank since its previous report of condition.

(10) The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms as it deems necessary to effectuate the purposes and to prevent evasions of this subsection.

[12 USC 375a. As added by act of June 16, 1933 (48 Stat. 182); amended by Public Resolution approved June 14, 1935 (49 Stat. 375); and by acts of Aug. 23, 1935 (49 Stat. 716); April 25, 1938 (52 Stat. 223); June 20, 1939 (53 Stat. 842); July 3, 1967 (81 Stat. 109) and Nov. 10, 1978 (92 Stat. 3665).]

(h)(1) No member bank shall make any loan or extension of credit in any manner to any of its executive officers, or to any person who directly or indirectly or acting through or in concert with one or more persons

owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, except in the case of such a bank located in a city, town, or village with less than thirty thousand in population, in which case such per centum shall be 18 per centum, or to any company controlled by such an executive officer or person, or to any political or campaign committee the funds or services of which will benefit such an executive officer or person or which is controlled by such an executive officer or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer or person and to all companies controlled by such executive officer or person and to all political or campaign committees the funds or services of which will benefit such executive officer or person or which are controlled by such executive officer or person, would exceed the limits on loans to a single borrower established by section 5200 of the Revised Statutes, as amended. For purposes of this paragraph, the provisions of section 5200 of the Revised Statutes, as amended, shall be deemed to apply to a State member bank as if such State member bank were a national banking association.

(2) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any company controlled by such an executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive, director, or person or which is controlled by such executive officer, director, or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer, director, or person and to all companies controlled by such executive officer, director, or person and to all political or campaign committees the funds or services of which will benefit such executive officer, director, or person or which are controlled by such executive officer, director, or person, would exceed an amount prescribed in a regulation of the appropriate Federal banking agency, unless such loan, line of credit, or extension of credit is approved in advance by a majority of the entire board of directors with the interested party abstaining from participating directly or indirectly in the voting.

(3) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any company controlled by such executive, officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person, unless such loan or extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(4) No member bank may pay an overdraft on an account at such bank of an executive officer or director.

(5) For purposes of this subsection, an executive officer, director, or person shall be considered to have control of a company if such executive officer, director, or person, directly or indirectly or acting through or in concert with one or more other persons—

(A) owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the company;

(B) controls in any manner the election of a majority of the directors of the company; or

(C) has the power to exercise a controlling influence over the management or policies of such company.

(6) For the purposes of this subsection—

(A) the term "person" means an individual or company;

(B) the term "company" means any corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, any other form of business entity not specifically listed herein, or any other trust, but shall not include any insured bank or any corporation the majority of shares of which is owned by the United States or by any State;

(C) a person shall be deemed to be a "director of a member bank" or a "person who directly or acting through or in concert with one or more persons owns, controls, or has power to vote more than 10 per centum of any class of voting securities of a member bank" if such person has such relationship with any bank holding company of which such member is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company;

(D) a person shall be deemed to be an "officer" of a member bank if such person is an officer of any bank holding company of which such member bank is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company;

(E) the term "executive officer" has the same meaning assigned such term under section 22(g) of this Act; and

(F) the term "pay an overdraft on an account" means the payment by a member bank of an amount for an account holder in excess of the funds on deposit in the account and does not include a payment of funds by the member bank in accordance with either a written preauthorized, interest-bearing extension of credit specifying a method repayment or a written preauthorized transfer of funds from another account of the account holder at that bank.

(7) The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms, as it deems necessary to effectuate the purposes and to prevent evasions of this subsection. The Board may further prescribe rules providing a reasonable period of time after the date of enactment of this subsection within which the amount of outstanding loans or extensions of credit made prior to such date of enactment shall be reduced so as to conform to the limitations of this subsection.

[12 USC 375b. As added by act of Nov. 10, 1978 (92 Stat. 3644).]

BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

SECTION 106—Tie-In Arrangements

* * * * *

(b)(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank

holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit. The Board may by regulation or order permit such exceptions to the foregoing prohibition as it considers will not be contrary to the purposes of this section.

(2)(A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account, or to any related interest of such person, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank, or to any related interest of such person shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term "extension of credit" shall have the same meaning given it in section 23A of the Federal Reserve Act and the term "executive officer" shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

(F)(i) Any bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates any provision of section 106(b)(2) shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided,* That the agency having authority to impose a civil money penalty may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed

under such authority. The penalty may be assessed and collected by the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, or the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counselling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(iii) The bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subsection (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days from the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be. The Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(v) If any bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) The Comptroller of the Currency, the Board and the Federal Deposit Insurance Corporation shall promulgate regulations establishing procedures necessary to implement this section.

(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(viii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(G)(i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written

report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintain a corresponding account in the name of such bank. Such report shall include the following information:

(*1*) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

(*2*) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political campaign committee the funds or services of which will benefit such executive officer or stockholder;

(*3*) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

(*4*) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.

(H) For the purpose of this paragraph—

(i) the term "bank" includes a mutual savings bank;

(ii) the term "related interests of such persons" includes any company controlled by such executive officer, director, or person, or any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person; and

(iii) the terms "control of a company" and "company" have the same meaning as under section 22 (h) of the Federal Reserve Act (12 U.S.C. 375b).

[12 USC 1972. As amended by acts of Nov. 10, 1978 (92 Stat. 3690) and Oct. 15, 1982 (96 Stat. 1520, 1523, 1526).]

FEDERAL DEPOSIT INSURANCE ACT OF SEPTEMBER 21, 1950

SECTION 7—Change in Control of Banks

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(k) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or any executive officer or principal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.

[12 USC 1817(k). As amended by acts of July 14, 1960 (74 Stat. 547); Sept. 12, 1964 (78 Stat. 940); Oct. 16, 1966 (80 Stat. 1046); Dec. 31, 1970 (84 Stat. 1811); Nov. 10, 1978 (92 Stat. 3683); and Oct. 15, 1982 (96 Stat. 1527).]