

FEDERAL RESERVE BANK  
OF NEW YORK

[ Circular No. 10,038 ]  
May 23, 1986 ]

CONDITIONS ON ACQUISITION OF  
THRIFT INSTITUTIONS BY BANK HOLDING COMPANIES  
Comment Requested by June 27 on Modifying the Conditions

*To All Depository Institutions, and Others Concerned,  
in the Second Federal Reserve District:*

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

The Federal Reserve Board has requested public comment on whether conditions it imposed on the acquisition of thrift institutions by bank holding companies should be modified. Comment should be received by the Board no later than June 27, 1986.

Since 1982, the Board has approved several applications by bank holding companies to acquire troubled or failed thrift institutions. In approving those acquisitions, and after significant public comment regarding the public benefits of the acquisitions, the Board established a number of conditions designed to assure that the thrifts continued to be operated as separate and independent thrift institutions. The conditions also limit transactions between the acquired thrifts and other holding company affiliates.

The Board has recently received requests for relief from these limitations to permit thrifts acquired by bank holding companies to jointly market and sell products and services with other bank holding company affiliates, cross-advertise the services and products of other holding company affiliates, and conduct certain limited transactions with other holding company affiliates. In light of the significant public participation that surrounded the original development of these restrictions, the Board believes that it is appropriate to seek public comment regarding whether the conditions have been effective in accomplishing their intended purposes and continue to be appropriate in light of recent developments in the thrift and banking industries, or whether the conditions should be modified.

Enclosed — for thrift institutions and bank holding companies in this District — is a copy of the Board's official notice in this matter. It will be published shortly in the *Federal Register*; in addition, copies will be furnished upon request directed to our Circulars Division (Tel. No. 212-791-5216). Comments on the proposal should be submitted by June 27, 1986 and may be sent to our Domestic Banking Applications Department.

E. GERALD CORRIGAN,  
*President.*

FEDERAL RESERVE SYSTEM

Regulation Y

(12 C.F.R. Part 225)

(Docket No. R-0572)

Conditions Imposed on Acquisition of Thrift  
Institutions by Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of public comments.

SUMMARY: The Federal Reserve Board is soliciting comments on whether the Board should modify and grant relief from the conditions it imposes on the acquisition of thrift institutions by bank holding companies under the Bank Holding Company Act and the Garn-St Germain Depository Institutions Act of 1982 to permit bank holding companies to conduct joint marketing and sales operations between thrift subsidiaries and other affiliates, advertise through thrift subsidiaries the services and products offered by its other affiliates, and engage in certain transactions between thrift and other affiliates.

DATE: All comments should be received by the Board by June 27, 1986.

ADDRESS: All comments, which should refer to Docket No. R-0572, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, or delivered to the courtyard entrance, Eccles Building, 20th Street, N.W., between "C" Street and

Constitution Avenue, Washington, D. C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Melanie L. Fein, Senior Counsel (202/452-3594), or Scott G. Alvarez, Senior Attorney (202/452-3583), Legal Division; or, for users of Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Since 1982, the Board has approved several applications by bank holding companies to acquire thrift institutions pursuant to the provisions of the Garn-St Germain Depository Institutions Act of 1982 and the Bank Holding Company Act ("BHC Act"). In approving these cases, the Board established a number of conditions designed to guard against possible adverse effects that may result from the affiliation of a thrift institution and a bank holding company. See Citicorp (Fidelity Federal Savings and Loan Association), 68 Federal Reserve Bulletin 656 (1982).

These conditions were developed in the context of specific applications pending before the Board and after informal public hearings and public comment that included comments from local and national bank and thrift trade associations, state regulatory authorities, local community groups, competing bank holding companies and thrift institutions, and members of Congress. The conditions have

been adopted in each case involving a thrift acquisition by a bank holding company since 1982.

The conditions were designed to assure that the thrift continued to be operated as a separate and independent institution engaged primarily in mortgage lending activities and did not operate in fact as a bank in violation of the interstate banking prohibitions of the BHC Act. The conditions were also designed to prevent the acquiring bank holding company from obtaining an unfair competitive advantage over other banks and thrift institutions by using the thrift to conduct activities not permitted to bank holding companies or conducting banking activities through the thrift that are not permitted to a savings and loan association.

Among the conditions to the Board's approval adopted to accomplish these purposes are restrictions on certain operations between thrift institutions and their bank holding company affiliates. These conditions require that:

(a) the thrift institution be operated as a separate, independent, profit-oriented corporate entity and not be operated in tandem with any other subsidiary of the bank holding company. The thrift institution and bank holding company must limit their operations to effect this condition, and must observe the following conditions:

(1) no banking or other subsidiary of the bank holding company shall link its deposit-taking activities to accounts at the thrift institution in a sweeping arrangement or similar arrangement, and

(2) neither the bank holding company nor any of its subsidiaries shall

solicit deposits or loans for the thrift institution, nor shall the thrift institution solicit deposits or loans for any other subsidiary of the bank holding company; and

(b) to the extent necessary to ensure independent operation of the thrift institution and prevent the improper diversion of funds, there shall be no transactions between the thrift institution and the bank holding company or any of its subsidiaries without the prior approval of the appropriate Federal Reserve Bank. This limitation encompasses the transfer, purchase, sale or loan of any assets or liabilities, but does not include infusions of capital by the bank holding company, the payment of dividends or the sale of residential real estate loans from the thrift institution to any subsidiary of the bank holding company.

Citicorp, which has acquired thrift institutions in California, Illinois, and Florida subject to these conditions, has requested relief from the above conditions in three general areas, so as to permit its thrifts to jointly market and sell products and services with other Citicorp affiliates, to cross-advertise the services and products of its affiliates through its thrifts, and to conduct certain limited transactions with other Citicorp affiliates. Citicorp contends that the conditions place the bank holding company and its subsidiary thrift institutions at a competitive disadvantage compared to local thrift institutions and bank holding companies as well as out-of-state bank holding companies with nonbanking operations in those markets, none of whom are subject to the Board's conditions.

In this regard, Citicorp asserts that it will only conduct cooperative programs that are permissible under the BHC Act between Citicorp's other subsidiaries. Citicorp states that its thrifts will not be operated as banks for purposes of the BHC Act or branches of Citicorp's subsidiary banks for purposes of the McFadden Act. Citicorp states that the conditions in (a)(1) and (a)(2) above assure this by prohibiting the linking of deposit-taking activities of thrift institutions in any arrangement with affiliates, and by prohibiting the solicitation of deposits by the thrift institution for its affiliates or by its affiliates for the thrift institution.

In urging establishment of the conditions, commenters asserted that the restrictions on operations are necessary to prevent bank holding companies owning thrift institutions from operating the thrift institution as a bank, and from gaining a competitive advantage over local thrift institutions by permitting the thrift institution to appear to the local consumer to be offering commercial banking and other services that thrift institutions are generally unable or not legally permitted to offer. Commenters argued that joint marketing, cross-advertising of products and services available from affiliates, and transactions with bank holding company affiliates also may permit a thrift to avoid restrictions imposed by the Garn-St Germain Act on the activities of federal S&Ls. Commenters argue further that the use of joint marketing

or cross-advertising may permit the thrift institution to operate in effect as branches for soliciting deposits or loans for its bank affiliates, thereby undermining the interstate banking prohibitions.

The Board believes that the recent requests for relief from the above restrictions on operations present a framework for evaluating whether the conditions have accomplished their intended purposes and the continued appropriateness of the conditions. Commenters are requested to evaluate these matters taking into account, among other things, the significance of the deregulation of interest rate differentials, increasing similarity in the powers of banks and thrifts, and the spread of interstate deposit-taking in both the thrift and banking industries. The Board believes that, in considering action in this area, it is appropriate to seek public comment, in light of the significant public participation that surrounded the original development of the conditions.

Accordingly, the Board seeks public comment on whether the restrictions, other than the restrictions on linking deposit-taking activities and cross-solicitation of deposits, should be retained, modified or removed. In order to permit the Board to evaluate the conditions, the Board requests comment on whether it continues to be necessary and appropriate to limit thrifts affiliated with bank holding companies from conducting activities and marketing services that both thrifts and bank holding companies are otherwise permitted to conduct

and market under applicable federal law in order to accomplish the goals of avoiding the undermining of limitations on interstate deposit-taking and on preventing unfair competition. In this connection, the Board also notes that affiliation of bank holding companies with thrift institutions does not raise the same concerns regarding the separation of banking and commerce that has motivated consideration of similar restrictions on operations between a commercial organization and a bank or thrift affiliate that is contemplated by currently pending legislation, and commenters are requested to take these differences into account in formulating their comments.

The Board also requests comment on whether the deregulation of interest rate differentials, expansion of the powers of thrifts, the growing number of states authorizing interstate banking, and similar events since the formulation of the Board's conditions have affected the need for the restrictions to accomplish their objectives. In this regard, the acquisition of a thrift by a bank holding company that is located in the same state or that is authorized under state law to acquire a bank in the state in which the thrift is located does not raise the concern that the acquisition may evade the BHC Act's limitations on interstate bank acquisitions. The Board requests comment on the extent to which the restrictions should be modified in these situations.



The Board also requests comment on whether modification of the restrictions in any of the following areas would adversely affect their policy goals:

Joint Marketing and Sales: Specifically, the Board requests comment on whether thrift institutions owned by bank holding companies should be permitted to conduct joint marketing and sales activities with their bank holding company affiliates. For example, should a thrift institution and a bank holding company real estate lending affiliate be permitted to jointly solicit business from a real estate developer, with the real estate lending affiliate offering to provide construction lending for a building project and the thrift offering to provide end loan financing for prospective purchasers of the real estate project. In addition, should a holding company affiliate be permitted to introduce existing corporate customers to the thrift institution for the purpose of obtaining relocation assistance or other products and services available through the thrift institution.

In this regard, the Board requests comment on whether any adverse effects that may result from conducting joint marketing and sales activities are sufficiently limited by retaining the condition prohibiting the linking of deposit-taking activities, and by requiring that the terms and pricing of services not be tied in any way and be the same regardless of whether the prospective customer obtains services from both the thrift institution and its affiliate or from only one of the institutions.

Cross Advertising and Referral: The Board also requests comment on whether thrift institutions should be permitted to offer access to services and products of its bank holding company affiliates, and bank holding company affiliates should be permitted to offer access to services and products offered by the thrift institutions. For example, should a thrift institution be permitted to make applications available to its customers for credit cards marketed by and student loans underwritten by its bank holding company affiliates; advertise the products and services of its affiliates by placing brochures and posters in branch offices of the thrift institution and by including advertising inserts in monthly statements of customers of the thrift institution; provide customer lists to its bank holding company affiliates; and, refer its customers to affiliates and provide promotional material and a toll-free number for the affiliate. Similarly, should bank holding company affiliates of the thrift institutions be permitted to advertise the products and services of the thrift institutions.

The Board also seeks comment on whether any adverse effects that may result from cross-advertising and referral activities may be limited by maintaining the current conditions prohibiting the thrift institution from soliciting deposits for its bank holding company affiliates and prohibiting bank holding company affiliates from soliciting deposits for the thrift institution, and by imposing conditions preventing the

thrift institution from providing credit analysis in connection with loans provided to customers of the thrift by a bank holding company affiliate, from disbursing credit funds on such loans, and from otherwise acting as a branch or loan production office of any holding company affiliate.

Transactions with Affiliates: The Board also requests comment on whether thrift institutions should be permitted to use services and products of bank holding company affiliates for the benefit of the thrift or its customers. For example, should a thrift institution be permitted to locate a branch office in a building owned by an affiliate and in which holding company affiliates also have offices with separate access.

Board of Governors of the Federal Reserve System,  
May 16, 1986.

(signed) William W. Wiles

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William W. Wiles  
Secretary of the Board