

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 10178]
June 23, 1987]

**AMENDMENT TO REGULATION Y
Implementing the Anti-Drug Abuse Act of 1986**

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

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

The Federal Reserve Board has announced approval of an amendment to Regulation Y implementing amendments to the Change in Bank Control Act required by the Anti-Drug Abuse Act of 1986.

The Anti-Drug Abuse Act of 1986 amended the Change in Bank Control Act (CBCA) to require Federal banking agencies to publish notice of any filing made under the CBCA to acquire control of a bank or bank holding company.

The Anti-Drug Abuse Act requires the banking agencies to publish the name of each party acquiring control of a bank or bank holding company, as well as the name of the target institution, and to solicit public comment on the proposed acquisition, in particular from persons in the relevant local area.

Enclosed is the text of the amendment to Regulation Y, effective June 12, 1987, which has been reprinted from the *Federal Register* of June 17. Questions regarding the regulation may be directed to our Domestic Banking Applications Division (Tel. No. 212-720-5861).

E. GERALD CORRIGAN,
President.

Board of Governors of the Federal Reserve System

BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

AMENDMENT TO REGULATION Y

(effective June 12, 1987)

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0595]

Bank Holding Companies and Change in Bank Control; Procedures Regarding Publication and Processing of Notices Filed Under the Change in Bank Control Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Federal Reserve Board is adopting a final rule that amends Subpart E of its Regulation Y, section 225 of Title 12, Code of Federal Regulations, to implement certain amendments to the Change in Bank Control Act ("CBCA") made by section 1360 of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570. Under the final rule, notificants under the CBCA are required to publish, in a newspaper of general circulation in communities where the bank or bank holding company to be acquired is located, an announcement of the proposed acquisition no later than 10 calendar days after the notice has been accepted by the appropriate Federal Reserve Bank. The regulation provides an exception to the publication requirement where disclosure would threaten the safety or soundness of the bank to be acquired. In addition, publication may be delayed by the Board for good cause shown.

The final rule also authorizes the Board to extend the period of time it has to consider a CBCA notice for up to two additional periods of 45 days each.

Finally, as required by the Anti-Drug Abuse Act, the amended regulation states that the Board shall conduct an investigation of the competence, experience, integrity, and financial ability of each proposed acquirer and shall make an independent determination of the accuracy and completeness of the information submitted. A written report of the investigation will be prepared which will become part of the record.

The Board published a preliminary rule for public comment on February 4, 1987 (52 FR 3447) and is adopting that rule substantially as proposed. The public comment period expired on March 6, 1987.

DATE: Effective June 12, 1987.

FOR FURTHER INFORMATION CONTACT:

J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Scott G. Alvarez, Senior Counsel (202/452-3583), Legal Division; or Sidney Sussan, Assistant Director (202/452-2638), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

Under the CBCA, persons acting either individually or in concert to acquire control of any insured state member bank or bank holding company must provide the Board with 60 days prior written notice describing the

proposed acquisition and containing certain information concerning the financial resources and background of the notificant. The transaction may proceed at the end of the 60-day period, unless the Board disapproves the transaction or extends the notice period. An acquisition may proceed prior to the expiration of the 60-day review period if the Board issues a written statement of its intent not to disapprove the transaction.

On October 27, 1986, the President signed into law the Anti-Drug Abuse Act of 1986, Pub. L. 99-570. Section 1360 of this Act (hereinafter the "1986 Amendment") makes several amendments to the CBCA that necessitate a revision in the Board's implementing regulations.

Prior to the 1986 Amendment, the CBCA did not require notice to, or solicitation of comments from, the public in connection with a notice filed under the CBCA. The Board's regulation provided that the Board or the appropriate Reserve Bank could 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. (See 12 CFR 225.43(d)).

The 1986 Amendment requires the Board to publish the name of each person filing under the CBCA to acquire an insured bank or bank holding company, and to solicit public comment on the proposed acquisition, in particular from persons in the geographic area where the bank to be acquired is located. This publication

For this Regulation to be complete, retain:

- 1) Regulation Y pamphlet, revised effective February 3, 1984.
- 2) Amendments effective November 3, 1986; November 7, 1986 and December 15, 1986 (included in slip sheet dated November, 1986.)
- 3) This slip sheet.

requirement may be waived only when the agency determines in writing that disclosure or solicitation of public comment would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

Regulations promulgated by both the Federal Deposit Insurance Corporation (12 CFR 303.4(b)) and the Office of the Comptroller of the Currency (12 CFR 5.50(h)) provide for the public disclosure and solicitation of comments by requiring the notificant to publish a disclosure statement in a newspaper serving the community where the head office of the bank to be acquired is located.

Summary of Issues

The Board published a proposed rule to implement the 1986 Amendment on February 4, 1987, (52 FR 3447) and invited public comment on this proposal until March 6, 1987. The Board received 33 comments regarding this proposal in response to its request for public comment.

Eight comments, including comments from four Reserve Banks, one regional bank holding company and three small banking organizations, noted that the proposed regulations were mandated by the 1986 Amendment to the CBCA and generally supported the Board's proposed implementation of those statutory requirements.

Twenty-four comments, representing primarily small banks and bank holding companies whose principal shareholders are frequently subject to the CBCA requirements, urged the Board not to adopt the proposed regulations requiring notificants to publish notice of a proposed acquisition. These commenters argued that the publication requirements would impose added costs in bank acquirors and would further delay the regulatory approval process without, in the commenters view, contributing in any meaningful way to the identification of individuals involved in illegal activities. These commenters were also concerned that the publication requirement would permit third parties to interfere with the transfer of bank shares and argued that the added publicity surrounding bank stock acquisitions would dissuade competent individuals from purchasing shares of banks. Opponents of the publication process also argued that the current Board procedures for investigating the character, competence, experience and financial resources of prospective bank

purchasers are adequate and that it is unlikely that additional relevant information will be obtained from the public.

The Board recognizes that requiring publication of CBCA notices imposes an added burden on notificants under the Act. The Board notes, however, that this publication requirement is mandated by the recently enacted 1986 Amendments to the CBCA. The Board has attempted to minimize the procedural burdens that are associated with these publication requirements by adopting a form of publication that is similar to the form of publication used under the Bank Holding Company Act, and by permitting notificants to publish during a reasonable period that begins before the time that a CBCA notice is filed. The Board has also adopted provisions designed to permit notificants to coordinate the timing of the publication under the CBCA with public filings under other statutes, including the state and federal securities laws. Moreover, the Board has adopted procedures that permit the Board to waive the publication requirement where delay or public disclosure would seriously threaten the safety or soundness of the bank to be acquired.

The Board also notes that, while the 1986 Amendments require that the public be provided an opportunity to comment on notices filed under the CBCA, the 1986 Amendments do not confer any other rights on third parties to participate in any other way in the consideration of a notice filed under the CBCA. The final rule adopted by the Board expressly recognizes this and provides that no person, other than a notificant, who submits information regarding a notice filed under the CBCA shall thereby be entitled to any standing or right to participate in the Board's consideration of a notice, or to appeal or otherwise contest the Board's action regarding a notice.

Summary of Final Rule

The final rule adopted by the Board is substantially similar to the rule proposed by the Board for comment. This rule is also similar to regulations previously adopted by the OCC and the FDIC. The final rule amends the Board's regulations to require that or persons seeking to acquire a bank or bank holding company pursuant to the CBCA to publish an announcement must of the proposed acquisition in a newspaper of general circulation in the community in

which the head office of the state member bank or bank holding company to be acquired is located and, in the case of a bank holding company, in each community in which the head office of a bank subsidiary of the holding company is located.

The newspaper announcement must contain the name of each proposed acquiror, the percentage of shares to be acquired, the name of each bank or bank holding company to be acquired, and, in the case of a bank holding company, the names of each of its subsidiary banks. The announcement may contain additional information, including the percentage of shares already owned by notificants or other information deemed relevant by the notificants or the Board.

The announcement must also state that any person wishing to comment on the proposed acquisition may do so by submitting written comments to the appropriate Reserve Bank within 20 calendar days of publication or such shorter period of time as the Board may prescribe in a particular case. The announcement may be published no earlier than 10 calendar days before the CBCA notice is filed with the appropriate Reserve Bank and no later than 10 calendar days after the notice has been accepted by the Reserve Bank.

In addition to requiring newspaper publication by the notificant, the Board has determined to publish notice of filings made under the CBCA in the Federal Register. The Federal Register notice will contain the name of persons who propose to acquire control of a bank or bank holding company, the amount of shares to be acquired, and the names of all banks to be acquired, and will permit a minimum period of 15 calendar days for public comment, unless the Board determines that the public interest requires shortening or waiving this comment period. The Federal Register notice will be published upon submission to the Reserve Bank of the CBCA notice.

Under the final rule, the Board may dispense with public notice if it determines in writing that such publication and solicitation of comment would seriously threaten the safety and soundness of the bank or bank holding company to be acquired. Finally, the final rule expressly states that the publication requirement does not give any person standing to intervene in proceedings regarding the CBCA notice or to appeal or otherwise contest the Board's action regarding a notice.

Tender Offers

The Board notes that the FDIC and the OCC regulations provide that publication of a filing under the CBCA may be delayed for up to 34 days after the filing in the case of a proposed tender offer that requires notice under the CBCA and is simultaneously subject to the requirements of the Williams Act (15 U.S.C. 78m and 78n).¹

The Board's final rule would permit the Board, in its discretion, to postpone, but not eliminate, the publication requirement under the CBCA for such period as the Board deems appropriate where an acquiring party requests such delay and confidential treatment of a CBCA notice and demonstrates good cause for the delay. The Board's final rule permits the Board to postpone publication for whatever period is deemed to be appropriate, and does not adopt the specific 34-day delay period adopted by the FDIC and the OCC.

Extension of Time for Disapproving Transactions

Prior to the 1986 Amendment, the CBCA authorized the appropriate federal banking agency to extend for up to 30 days the statutory period in which a proposed acquisition could be disapproved under the CBCA. The 1986 Amendment provides that, in addition to this 30-day extension, the appropriate agency may authorize two additional extensions of not more than 45 days each. In order to utilize this authority, the agency must determine that: (i) An acquiring party has not furnished all the information required under section 7(j)(6) of the CBCA (12 U.S.C. 1817(j)(6)); (ii) material information submitted is substantially inaccurate; (iii) an investigation of an acquiring party has not been completed because of delay or inadequate cooperation by the acquiring party; or (iv) additional time is needed to investigate and determine that no acquiring party has a record of failing to

comply with the currency transaction reporting requirements of the Bank Secrecy Act, Subchapter II of Chapter 53 of Title 31, United States Code.

The final rule amending § 225.43(c) of Regulation Y reflects this change in the CBCA. If the Board acts under this authority to extend the time for disapproval beyond the initial 30-day extension, the rule requires the Board to notify the acquiring party of the reasons for such extension, including a statement of any information that is determined by the Board to be incomplete, inadequate, or inaccurate.

Investigation and Report

The 1986 Amendment requires the appropriate agency to conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice under the CBCA as a person by or for whom such acquisition is to be made, and to make an independent determination of the accuracy and completeness of the information required by the CBCA to be submitted to the agency. The agency is then required to prepare a written report of such investigation, which is to become part of the record. The final rule amends § 225.43(d) of Regulation Y to reflect this change in the law.

Regulatory Flexibility Act

This final rule adopted by the Board implements specific statutory requirements recently imposed by the Anti-Drug Abuse Act of 1986. The CBCA generally requires persons seeking to acquire control of a bank or bank holding company to provide prior written notice to the appropriate federal banking agency, but imposes no requirements on the target bank or bank holding company itself. The requirement that persons seeking to acquire a bank or bank holding company under the CBCA publish notice of the proposed acquisition would likewise not impose any regulatory burden on banks or bank holding companies of any size that are the targets of a proposed change in control. The final rule would have the benefit, moreover, of providing such banks or bank holding companies with notice of a proposed acquisition of their shares under the CBCA and of permitting an opportunity for such banks, bank holding companies, and other interested persons to provide comment and information regarding the proposal to the Board. Thus, the final rule is not expected to have a significant

economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The final rule adopted by the Board requires persons proposing to acquire a bank or bank holding company in a transaction subject to the CBCA to publish notice of the proposed transaction in a newspaper of general circulation in communities served by the target bank or bank holding company and to provide the Board with verification of such publication. No additional reporting requirements or modification to existing reporting requirements have been imposed by this rule.

List of Subjects in 12 CFR Part 225

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

For the reasons set out in this notice, and pursuant to the Board's authority under section 13 of the Change in Bank Control Act (12 U.S.C. 1817(j)(13)), 12 CFR Part 225 is amended as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907 and 3909.

2. Section 225.43(a) is revised to read as follows:

§ 225.43 Procedures for filing, processing, publishing, and acting on notices.

(a)(1) *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 Change in Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated Board form. With respect to personal financial statements required by paragraph 6(B) of the Change in 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.

(2) *Acceptance of notice.* The 60-day notice period specified in § 225.41 of this subpart shall commence on the date all

¹ The tender offer regulations applicable to bank holding companies and to state member banks, 17 CFR 240.12(d) and 12 CFR 206.8, require that an offer remain open for at least 20 business days from the date the tender offer is first published, sent or given to security holders. Shares tendered or deposited pursuant to the offer may be withdrawn by a depositing shareholder at any time within the first 15 business days of the offering. 17 CFR 240.14(d)(7); 12 CFR 206.8(g). Under the CBCA, a bidder may not purchase shares deposited in response to a tender offer in amounts exceeding the CBCA limits until the expiration of the review period unless notified by the Board at an earlier time that the acquisition may commence.

required information is received by the appropriate Reserve Bank or the Board. The Reserve Bank shall notify the person or persons submitting a notice under this subpart of the date all such required information is received and the notice is accepted for processing.

(3) *Publication*—(i) *Newspaper announcement.* A person(s) filing a notice under this subpart shall publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office of the state member bank to be acquired is located or, in the case of a proposed acquisition of a bank holding company, in the community in which its head office is located and in the community in which the head office of each of its subsidiary banks is located. The announcement shall be published no earlier than 10 calendar days prior to the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after acceptance and the publisher's affidavit of a publication shall be provided to the appropriate Reserve Bank.

(ii) *Contents of newspaper announcement.* The newspaper announcement shall state:

(A) The name of each person identified in the notice as a proposed acquiror of the bank or bank holding company and the percentage of shares proposed to be acquired;

(B) The name of the bank or bank holding company to be acquired, including, in the case of a bank holding company, the name of each of its subsidiary banks; and

(C) A statement that interested persons may submit comments on the notice to the Board or the appropriated Reserve Bank for a period of 20 days or such shorter period as may be provided pursuant to paragraph (a)(3)(v) of this section.

(iii) *Federal Register announcement.* The Board will, upon filing of a notice under this subpart, publish announcement in the *Federal Register* of receipt of the notice. The *Federal Register* announcement will contain the information required under paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B) of this section and a statement that interested persons may submit comments on the proposed acquisition for a period of 15

days or such shorter period as may be provided pursuant to paragraph (a)(3)(v) of this section. The Board may waive publication in the *Federal Register* if the Board determines that such action is appropriate.

(iv) *Delay of publication.* The Board may permit delay in the publication required under paragraphs (a)(3)(i) and (a)(3)(iii) if the Board determines, for good cause shown, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate Reserve Bank.

(v) *Shortening or waiving notice.* In circumstances requiring prompt action, the Board may shorten the public comment period required under this paragraph. The Board may also waive the newspaper publication and solicitation of public comment requirements of this paragraph, or it may act on a notice before the expiration of a public comment period, if it certifies in writing that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

(4) *Consideration of public comments.* In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or *Federal Register* announcement, whichever is later. At the Board's option, comments received after this period may, but need not, be considered.

(5) *Standing.* No person (other than the acquiring person) who submits comments or information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

3. Section 225.43(c)(2) is revised to read as follows:

(c) * * *
(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(s).

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each if the Board determines that:

(A) Any acquiring person has not furnished all the information required under paragraph (a) of this section;

(B) Any material information submitted is substantially inaccurate;

(C) It is unable to complete the investigation of an acquiring person because of inadequate cooperation or delay by that person; or

(D) Additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of Chapter 53 of Title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefor and shall include a statement of the information, if any, deemed incomplete or inaccurate.

* * * * *
4. Section 225.43(d) is revised to read as follows:

(d)(1) *Investigation and report.* After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under paragraph (a) of this section. 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.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

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Board of Governors of the Federal Reserve System, June 11, 1987.
William W. Wiles,
Secretary of the Board.
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