

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 10527]
March 30, 1992]

BANK HOLDING COMPANIES
Rescission of 1985 Regulation Y Ruling Regarding
Interstate Relocations of Subsidiary National Banks

*To All Bank Holding Companies, 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 issued an interpretation rescinding its policy statement requiring applications for relocations of a subsidiary bank to another state. Accordingly, the Board has determined not to require the filing of an application for Board approval under the Bank Holding Company Act ("BHC Act") for national bank relocations except in situations in which the Board has found an evasion of the BHC Act.

Printed on the following pages is the official notice of the Board's action, as submitted for publication in the *Federal Register*. Questions on this matter may be directed to our Domestic Banking Applications Division (Tel. No. 212-720-5861).

E. GERALD CORRIGAN,
President.

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FEDERAL RESERVE SYSTEM

12 CFR PART 225

[Docket No. R-0751]

Rescission of Policy Statement Requiring Application
for Relocation of a Subsidiary Bank to Another State

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation; Rescission of Policy Statement.

SUMMARY: The Board has rescinded its policy statement requiring applications for relocations of a subsidiary bank to another state. 12 C.F.R. § 225.144. Accordingly, the Board has determined not to require the filing of an application for Board approval under the Bank Holding Company Act ("BHC Act") for bank relocations except in situations in which the Board has found an evasion of the BHC Act.

EFFECTIVE DATE: March 23, 1992

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel, Legal Division (202) 452-3583, or Anne R. Wolfson, Attorney, Legal Division (202) 452-2246. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In 1985, the Board issued a policy statement regarding the relocation of banks owned by bank holding companies. 50 Fed. Reg. 33913 (1985). That policy statement was issued in response to a petition requesting that the Board review a proposal by a subsidiary national bank of Mark Twain

Bancshares, Independence, Missouri, to relocate from Missouri to Kansas, pursuant to section 30 of the National Bank Act. The policy statement explains that the Board believed that the constraint imposed by the Douglas Amendment to the BHC Act on the Board's authority to approve the bank acquisition proposals similarly constrained a bank holding company's authority to retain control of a bank. The Douglas Amendment provides that the Board may not approve an application to acquire control of a bank outside of the applicant holding company's home state, unless the acquisition is specifically authorized by the state where the bank to be acquired is located. 12 U.S.C. 1842(d). In the policy statement the Board stated that its approval of an acquisition of a bank is necessarily subject to the condition that the bank remain located in the state specified to the Board in the application by the bank holding company to acquire the bank. Consequently, a change in location of the bank outside of the bank holding company's home state constituted a material change in an essential predicate of the Board's approval of the acquisition of the bank. This material change required prior Board approval under the BHC Act and the Douglas Amendment.

On this basis, the Board in 1989 reviewed and approved an application by SouthTrust Corporation, Birmingham, Alabama, to retain a subsidiary national bank of SouthTrust Corporation after its relocation from Alabama to Georgia. The SouthTrust relocation was recently reviewed by the U.S. Court of Appeals for

the District of Columbia Circuit. Synovus Financial Corporation v. Board of Governors of the Federal Reserve System, No. 89-1394 (D.C. Cir. Dec. 20, 1991), petition for reh'g pending. In that case, the Court held that the Board did not have jurisdiction under the BHC Act to review the relocation proposed by SouthTrust. The Court reasoned that the relocation of a national bank did not represent "an acquisition" that was subject to the requirements of the BHC Act and that a condition restricting the location of the bank was not imposed by the Douglas Amendment where the relocation was permitted under the terms of section 30 of the National Bank Act. The U.S. District Court for the Eastern District of Pennsylvania had reached a similar conclusion in an earlier lawsuit against the Comptroller of the Currency that has since become moot. See McEnteer v. Clarke, 644 F. Supp. 290 (E.D. Pa. 1986).

The Board has reconsidered its policy statement in light of these court decisions, and has determined not to require the filing of an application for Board approval under the BHC Act for the relocation of a national bank owned by a bank holding company except in situations in which the Board has found an evasion of the BHC Act. Accordingly, the Board has determined to rescind its policy statement regarding national bank relocations.

Regulatory Flexibility Act Analysis

The action would apply equally to entities of all sizes, and does not have particular effect on small entities.

Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.), the Board believes that the interpretation will not have a significant economic impact on a substantial number of small entities.

Public Comment

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with this action, because it represents the announcement of a Board policy that was not subject to these requirements. In addition, the change in policy relieves a previous restriction, and is not subject to the requirements of section 553. The Board's expanded rule making procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements, Securities, State member banks.

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PART 225 - BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

1. **AUTHORITY:** 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

§225.144 [Removed]

2. 12 CFR 225.144 is removed.

By order of the Board of Governors of the Federal Reserve System, March 16, 1992.

(signed) Jennifer J. Johnson

Jennifer J. Johnson
Associate Secretary of the Board