FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10550**
July 8, 1992]

CHANGES TO REDUCE REGULATORY BURDEN

— Amendments to Regulation Y, Effective June 29, 1992

— Proposed Regulatory Amendments, For Comment by July 29, 1992

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

In order to reduce unnecessary regulatory burdens, the Board of Governors of the Federal Reserve System has:

(a) adopted amendments, effective June 29, 1992, to its Regulation Y, "Bank Holding Companies and Change in Bank Control," to waive certain merger application requirements and lessen application requirements for certain nonbank company and assets acquisitions; and

(b) invited comments, by July 29, 1992, on proposals that would (1) reduce the number of newspaper notices required when filing applications with the Board, and (2) exempt certain transactions with affiliates that are related to a merger or consolidation from the limitations of section 23A of the Federal Reserve Act.

Following are the texts of the Board's announcements:

Final amendments

The Federal Reserve Board has announced approval of amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) which streamline certain procedural requirements to reduce unnecessary regulatory burden.

The amendments, which are effective June 29, 1992, will:

- Increase the size of nonbank companies that can be acquired by bank holding companies under the 15-day expedited notice procedures;
- Increase the relative size of nonbank assets that can be acquired by bank holding companies in the ordinary course of business without prior System approval; and
- Describe the criteria for determining when an application pursuant to Section 3 of the Bank Holding Company Act may be waived in connection with certain bank mergers.

Enclosed is a copy of the amendments, as published in the *Federal Register* of June 29. Additional, single copies may be obtained at the Bank (33 Liberty Street) from the Issues Division on the first floor, or by calling our Circulars Division (Tel. No. 212-720-5215 or 5216).

Proposed Amendments

The Federal Reserve Board has requested public comment on proposed changes to the Board's regulations and procedures affecting the applications process in order to reduce the regulatory burden.

Comments should be received by July 29, 1992.

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These proposed amendments to the Board's Rules of Procedure and to Regulation Y (Bank Holding Companies and Change in Bank Control) would:

- Halve the newspaper publication requirements for a variety of banking structure applications; and
- Exempt mergers of affiliated banks and affiliated thrift institutions from the requirements of Section 23A of the Federal Reserve Act if the merger is to be acted on by the primary regulator of the resulting institution pursuant to the Bank Merger Act.

Printed on the following pages is the text of the Board's proposals, as published in the *Federal Register* of June 29. Comments thereon should be submitted by July 29, 1992, and may be sent to the Board, as indicated in the notice, or to our Domestic Banking Applications Division.

* * * * *

Questions on these matters may be directed to Jay Bernstein, Staff Director, Domestic Banking Applications Division (Tel. No. 212-720-5861).

E. GERALD CORRIGAN,
President.

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FEDERAL RESERVE SYSTEM

12 CFR Parts 225 and 262

[Regulation Y; Docket No. R-0760]

Bank Holding Companies and Change in Bank Control; Rules of Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Administrative Procedure Act, the Board is requesting public comment on proposed amendments to the provisions of its Rules of Procedure (Rules) and the Board's Regulation Y, Bank Holding Companies and Change in Bank Control. Section 262.3(b) of these Rules require two newspaper publications of notice of applications filed with the Federal Reserve under section 9 of the Federal Reserve Act (for membership or to establish branches), the Bank Merger Act (if a state member bank is involved), and the Bank Holding Company Act. The proposed amendments would reduce from twice to once the number of times notice must be published in a newspaper of general circulation of the filing of an application with the Board. The amendments would have no effect on public comment periods, which currently start when the first notice is published. Alternative sources of notice will continue to be available, such as the weekly list of pending applications prepared by the Board and the Reserve Banks and, in the case of Bank Holding Company Act applications, notices published in the **Federal Register**.

DATES: Comments on the revised proposed amendments should be submitted no later than July 29, 1992.

ADDRESSES: Comments should refer to Docket No. R-0760 and may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to the Board's Mail Room between 8:45 a.m. and 5:15 p.m., or to the Board's Security Control Room outside of those hours. Both the Mail Room and the Security Control Room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), or Deborah M. Awai, Attorney (202/452-3594), Legal Division; Sidney M. Sussan, Assistant Director (202/452-2638), or Gary P. Knoblach, Senior Financial Analyst (202/452-3270), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (5 U.S.C. 552(a)(1)) requires each agency to publish in the **Federal Register** statements that include requirements of all formal and informal procedures available and its rules of procedure. In order to fulfill this requirement, the Board has adopted Rules of Procedure (12 CFR part 262) (Rules).

Currently, § 262.3(b)(1) of these Rules requires an applicant to publish notice of the following types of applications "on the same day of each of two consecutive weeks" in a newspaper of general circulation:

(i) Application by a state bank for membership in the Federal Reserve System;

(ii) Application by a State member bank to establish a domestic branch;

(iii) Application by a State member bank for the relocation of a domestic branch office;

(iv) Application by a bank for merger, consolidation, or acquisition of assets or assumption of liabilities, if the acquiring, assuming, or resulting bank is to be a State member bank;

(v) Application by a company to become a bank holding company; and

(vi) Application by a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company.

The Board proposes to amend § 262.3(b)(1) of its Rules and a related policy statement regarding notice of applications (12 CFR 262.25) to reduce the newspaper publication requirement from twice to once. These amendments would reduce a regulatory burden associated with the filing of applications by reducing the newspaper publication costs and paperwork burden associated with applications that are subject to the publication requirement. As part of this action, the Board would amend instructions for its application forms to conform to the notice requirements in the Rules. The Board also proposes to make parallel amendments to §§ 225.14(b) and 225 23.(d) of its Regulation Y (12 CFR part 225) to conform with the revised notice requirements. This proposal would not affect the length of the public comment period for any application.

Before adopting these amendments, the Board will consider whether the action would have a serious adverse effect on actual notice of applications. Newspaper notices are only one of several means by which notice is provided to interested parties that the Board is reviewing a proposed transaction. For example, the notice required by § 262.3(b)(1) is in addition to weekly lists issued by the Board and the Reserve Banks identifying applications filed and acted upon under sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. 1842 & 1843) and the Bank Merger Act (section 18(c) of the Federal Deposit Insurance Act; 12 U.S.C. 1828(c)). This list is provided to any interested party upon request, including requests for regular notice of all filings of applications.[1] The Board also publishes notice of all Bank Holding Company Act applications in the **Federal Register**. In addition, depository institutions and their holding companies may provide actual notice of upcoming corporate reorganizations to customers and to persons in their service areas in the form of press releases, news stories, and direct mail or lobby notices. In order to assist the Board in addressing this consideration, the Board specifically requests comment on the benefits that reducing the publication burden would have compared to the reduction in required newspaper notice.

Before adopting these amendments, the Board also will consider whether the amendments would have a serious adverse effect on the opportunity for public comment. Currently, § 262.3(b)(1) of the Rules provides that the first notice may appear no more than ninety calendar days prior to acceptance of the application by the applicant's Reserve Bank and that the notices must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for at least thirty days after the date of publication of the first notice. The

[1] *See* § 262.3(i) of the Rules and the policy statement at 12 CFR 262.25 for a more detailed description of these alternate sources of information on these applications.

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amendments would retain the requirements that newspaper notice must appear in a newspaper of general circulation no more than ninety calendar days prior to acceptance of an application as well as the requirement that the notice provide for a thirty day comment period. The Board invites comment on the possible affects on public notice that reducing the publication requirement can be expected to have.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that the proposed amendments would have a significant adverse economic impact on a substantial number of small entities. The proposed amendments would reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 262

Administrative practice and procedure, Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend title 12 of the Code of Federal Regulations, parts 225 and 262, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 would continue to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831(i), 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102-242, 105 Stat. 2236 (1991)).

Subpart B—Acquisition of Bank Securities or Assets

2. Section 225.14 is amended by adding a new paragraph (b)(3) to read as follows:

§ 225.14 Procedures for applications, notices, and hearings.

* * * * *

(b) * * *

(3) *Newspaper notice.* The applicant shall cause to be published in a newspaper of general circulation in the affected community, in the form prescribed by the Board in 12 CFR 262.3(b), at least one notice soliciting public comment on the proposed acquisition.

* * * * *

Subpart C—Nonbanking Activities and Acquisitions by Bank Holding Companies

3. Section 225.23 is amended by removing the heading to paragraph (d), by revising the headings to paragraphs (d)(1) and (d)(2) and by adding a new paragraph (d)(3) to read as follows:

§ 225.23 Procedures for applications, notices, and hearings.

* * * * *

(d)(1) *Federal Register notice for listed activities.* * * *

(2) *Federal Register notice for unlisted activities.* * * *

(3) *Newspaper notice.* The applicant shall cause to be published in a newspaper of general circulation in the affected community, in the form prescribed by the Board in 12 CFR 262.3(b), at least one notice soliciting public comment on the proposed acquisition.

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PART 262—RULES OF PROCEDURE

1. The authority citation for part 262 would continue to read as follows:

Authority: 5 U.S.C. 552.

2. In § 262.3, by redesignating paragraphs (b)(1) introductory text, (b)(1)(i) through (vi), and the flush text beginning "the applicant" and ending with "the Board" as paragraphs (b)(1)(i) introductory text, (b)(1)(i)(A) through (F), and (b)(1)(i) concluding text, respectively; by removing the words "on the same day of each of two consecutive weeks" from the newly designated paragraph (b)(1)(i) concluding text; by designating the text, following newly designated paragraph (b)(1)(i) concluding text, which begins with the sentence "The notice shall be placed in the classified" as paragraph (b)(1)(ii); and by revising the first, second and third sentences of newly designated paragraph (b)(1)(ii) to read as follows:

§ 262.3 Applications.

* * * * *

(b) * * * (1)(i) * * *

* * * * *

(ii) The notice shall be placed in the classified advertising legal notices section of the newspaper, and must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for at least thirty days after the date of publication. Within 7 days of publication, the applicant shall submit its application to the appropriate Reserve Bank for acceptance along with a copy of the notice. If the Reserve Bank has not accepted the application as complete within ninety days of the date of publication of the notice, the applicant may be required to republish notice of the application. * * *

* * * * *

§ 262.3 [Amended]

3. In § 262.3, paragraph (b)(2) would be amended by removing the word "first" in the second sentence.

§ 262.25 [Amended]

4. In § 262.25, paragraph (a)(1) would be amended by removing the word "first" in the first sentence.

By order of the Board of Governors of the Federal Reserve System, June 23, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-15135 Filed 6-26-92; 8:45 am]

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12 CFR Part 250

[Docket No. R-0762]

Transactions with Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is proposing to exempt from the limitations of section 23A of the Federal Reserve Act the transfer of assets and liabilities between affiliated insured depository institutions when the transfer is part of the merger or consolidation of the affiliated institutions. The proposed exemption would be available only for transactions that must be approved by the resulting insured depository institution's primary regulator under the Bank Merger Act. The exemption would be available by regulation, and transactions that meet

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the proposed criteria will not require additional Board review under section 23A.

DATES: Comments must be submitted on or before July 29, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0762 may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:40 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Attorney (202/452-3289), or Christopher Bellini, Attorney (202/452-3269), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, regulates certain transactions between depository institutions and their affiliates, including transactions between affiliated depository institutions. Section 23A is designed to protect insured depository institutions from abuses that may result from lending and asset purchase transactions with their affiliates. In general, section 23A prohibits an insured depository institution from engaging in covered transactions (which include extensions of credit and purchases of assets) with any single affiliate in excess of 10 percent of the institution's capital and surplus. A 20 percent aggregate limit is imposed on the total amount of covered transactions by a bank with all affiliates. Under section 23A, all extensions of credit between a bank and its affiliate must meet certain collateral requirements. Section 23A also prohibits an insured depository institution from purchasing any low-quality assets from an affiliate, and requires that all transactions with an affiliate must be conducted on terms that are consistent with safe and sound banking practices.

Section 23A provides an exemption for several types of transactions. In addition, section 23A provides the Board with general authority to act by order or regulation to grant exemptions from the provisions of section 23A for any transaction where the Board determines that an exemption is consistent with the purposes of the section.

Savings associations became subject to section 23A in 1989 as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and thus, transactions between affiliated savings associations are subject to the quantitative, collateral and qualitative restrictions of section 23A.[1] The legislative history of FIRREA indicates that Congress intended the Board's general exemptive authority to extend to transactions involving savings associations where an exemption is consistent with the purposes of section 23A and with prior Board exemptions.[2]

A number of insured depository institutions recently have sought advice from the Board regarding whether the provisions of section 23A apply to transactions in which one institution acquires the assets of an affiliated institution through a merger or consolidation of the two institutions. Merger transactions involving affiliated banks generally have not been subjected to the provisions of section 23A where these transactions have been approved by a federal banking agency pursuant to the Bank Merger Act. Review of the transaction under the Bank Merger Act includes review of the financial impact of the transaction and the quality and soundness of the assets transferred in the transaction. By its terms, the restrictions imposed by section 23A do not apply to mergers involving unaffiliated depository institutions.

The Board proposes to act by regulation to grant an exemption from the section 23A limits for transactions involving the merger of affiliated insured depository institutions where the transaction is approved under the Bank Merger Act.[3] The Board requests public comment on this proposal.

[1] 12 U.S.C. 1468.

[2] *See* 135 Cong. Rec. S10200 (daily ed. August 4, 1989) (statements of Senators Garn, Riegle and Sanford), and 135 Cong. Rec. H4997 (daily ed. August 3, 1989) (statements of Representatives Gonzalez and Carper).

[3] Under the Bank Merger Act, before an insured institution merges with, or acquires the branches of, another institution, it is required to file an application with its primary regulator, even if the institutions already are commonly owned.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that the interpretation would have a significant adverse economic impact on a substantial number of small entities. The interpretation would reduce regulatory burdens imposed by section 23A and have no particular adverse effect on other entities.

List of Subjects in 12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend title 12 of the Code of Federal Regulations, part 250, as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 would continue to read as follows:

Authority: 12 U.S.C. 248(i).

2. 12 CFR 250.241 is added to read as follows:

§ 250.241 Exemption from section 23A of the Federal Reserve Act for merger transactions between certain affiliated insured depository institutions.

(a) *Grant of exemption.* An exemption from the provisions of section 23A of the Federal Reserve Act is granted for the purchase by one insured depository institution of the assets of another insured depository institution if—

(1) The transaction represents the purchase by the insured depository institution of all or substantially all of the assets of the other institution or the merger or consolidation of the insured depository institution with the other institution, in a transaction in which only one of the insured depository institutions continues to operate; and

(2) The transaction has been approved by the appropriate federal banking agency for the surviving insured depository institution pursuant to the Bank Merger Act.

(b) *Definitions.* For purposes of this section, the terms "appropriate federal banking agency" and "insured depository institution" are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act.

By order of the Board of Governors of the Federal Reserve System, June 23, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-15136 Filed 6-26-92; 8:45 am]

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Amendments to Regulation Y

Docket No. R-0761

Changes in Application Requirements

Effective June 29, 1992

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0761]

Bank Holding Companies and Changes in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has revised part 225 (Regulation Y) by streamlining certain procedural requirements in that rule to reduce unnecessary regulatory burden.

The revisions include: the publication of criteria to determine whether an application under the Bank Holding Company Act (BHC Act) may be waived for transactions involving certain bank mergers; an increase in the size of nonbank companies that can be acquired by a bank holding company under the Board's 15-day expedited notice procedures; and an increase in the relative size of nonbank assets that can be acquired by a bank holding company in the ordinary course of business without prior Federal Reserve System (System) approval.

EFFECTIVE DATE: The amendments to part 225 of the Board's Rules are effective June 29, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), or Deborah M. Awai, Attorney (202/452-3594), Legal Division; Sidney M. Sussan, Assistant Director (202/452-2638), or Gary P. Knoblach, Senior Financial Analyst (202/452-3270), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board has revised several provisions of the Board's Regulation Y (part 225) to streamline certain procedures to reduce unnecessary regulatory burden. The adoption of these procedures would not jeopardize important public policy objectives, particularly maintaining the safety and soundness of the banking system, or the Board's ability to fulfill statutory objectives. The revisions include:

(1) The publication of criteria to determine whether an application under the Bank Holding Company Act may be waived for transactions involving certain bank mergers;

(2) An increase in the size of nonbank companies that may be acquired by a bank holding company under the Board's 15-day expedited notice procedures; and

(3) An increase in the relative size of nonbank assets that may be acquired by a bank holding company in the ordinary course of business without prior System approval.

I. Waiver of Bank Merger Act Applications

Section 225.12 of Regulation Y provides that a bank holding company is not required to obtain prior Board approval for a transaction that involves the merger or consolidation of a subsidiary bank of the holding company with another bank if the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act.[1] This exception does not by its terms apply to transactions in which the bank holding company acquires the voting shares of another bank prior to merging the bank into an existing subsidiary. This exception also does not apply if the bank holding company acquires shares of a bank holding company that is immediately dissolved or merged as part of the underlying bank merger.

The System has, on a case-by-case basis, determined that an application is not required in situations where the essence of the transaction is a bank merger that is reviewed by a federal banking agency under the Bank Merger Act, the merger occurs simultaneously with the bank or bank holding company acquisition and the bank is not operated by the acquiring bank holding company as a separate entity, and the transaction does not raise any significant issue that is uniquely within the Board's area of review under the BHC Act.[2] The Board believes that formally publishing these conditions would eliminate applicant burden and make the applications process more efficient.

Accordingly, the Board has amended § 225.12 of Regulation Y to waive the application requirement under the BHC Act and § 225.11 of Regulation Y in the case of a transaction involving the acquisition by a bank holding company if the transaction involves primarily the merger of a bank into an existing operating subsidiary bank of the acquiring bank holding company in a transaction that is reviewed by a federal banking supervisor under the Bank Merger Act. In order to qualify for this regulatory waiver, the following other criteria must also be met:

(1) The bank merger, consolidation, or asset purchase must occur simultaneously with the acquisition of the shares of the bank or bank holding company, and the bank must not be operated by the acquiring bank holding company as a separate entity other than as the survivor of the merger or consolidation;

(2) The transaction may not involve the acquisition of any nonbank company that would require prior approval under section 4 of the BHC Act (12 U.S.C. 1843);

(3) Both before and after the transaction, the bank holding company must meet the Board's Capital Adequacy Guidelines (appendices A and B);[3] and

(4) The acquiring bank holding company has provided written notice of the transaction to the Reserve Bank at least 30 days prior to consummation of the transaction, and the Reserve Bank has not informed the bank holding company that an application under § 225.11 is required.

Notice of a transaction under this revision would be sufficient if it contains a description of the transaction, the names of the parties, and a copy of the Bank Merger Act application filed with the primary regulator of the surviving bank. The System retains the authority to require an application under the BHC Act and § 225.11 of Regulation Y if the System determines that the transaction has a significantly adverse impact on the financial condition of the acquiring bank holding company (e.g., the level of debt of the acquiring bank holding company would increase significantly, the ability to meet cash flow needs would be significantly impacted, or other financial or managerial issues are raised), or the transaction raises other issues regarding factors which the System has primary or

[1] This exception is not available for transactions that involve the merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank or any transaction requiring the Board's prior approval under § 225.11(e).

[2] For example, where the bank holding company is to acquire a bank as a subsidiary for a moment in time and then merge the bank into an existing subsidiary bank.

[3] Banking organizations anticipating significant growth are expected to maintain capital, including tangible capital positions, well above the minimum levels. For example, most such organizations generally must operate at capital levels ranging at least 100 to 200 basis points above the stated minimums.

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exclusive jurisdiction under the BHC Act.

II. Criteria for Use of 15-Day Expedited Procedure

The Board has established, in § 225.23(f) of Regulation Y, an expedited procedure for reviewing proposals by bank holding companies to make small acquisitions of nonbanking companies. Under this existing procedure, a bank holding company may, in lieu of submitting a formal application, file an abbreviated notice that includes a copy of a newspaper notice or request that the System publish notice of the application in the **Federal Register**, and may consummate the transaction generally after five days following the close of the public comment period for the proposal. The expedited procedure is available only if:

(1) The company to be acquired is engaged only in activities listed in § 225.25 of Regulation Y;

(2) 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;

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

(4) The bank holding company meets the Board's capital adequacy guidelines.

The Board adopted this procedure in its amendments to Regulation Y in 1983. The Board's experience in reviewing small acquisitions since that time has been that few supervisory or other issues are raised by these proposals. Where a proposal presents material issues that require Board consideration, the Board has reserved the right to require the acquiring bank holding company to file a full application.

In light of this experience, the Board has determined to raise the limit on the size of an acquisition that would qualify for the expedited procedures. This revision permits bank holding companies (subject to the other criteria) to acquire nonbank companies where neither the book value of the assets to be acquired nor the gross consideration paid for the assets exceeds the lesser of $100 million or five percent of the applicant's consolidated assets.[4]

[4] The revision retains the existing provision for bank holding companies with less than $300 million in total consolidated assets that otherwise meets the criteria set forth in this subsection. These bank holding companies would continue to be able to use the expedited procedure if 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.

III. Nonbank Assets Acquired in the Ordinary Course of Business

Pursuant to § 225.22(c)(7) of Regulation Y, a bank holding company may, under certain circumstances, acquire nonbank assets in the ordinary course of business without filing an application if the assets to be acquired relate to activities that the bank holding company has previously received approval to conduct. The Board has interpreted the exception for transactions conducted in the ordinary course of business to permit the acquisition of less than substantially all of the assets of a company, division, or department of another company. 12 CFR 225.132. This interpretation also requires that the book value of the assets to be acquired not exceed 20 percent of the book value of the assets of the applicant in the same line of activity.

The Board has determined, based on its experience with transactions that do not qualify for the exception because the transaction exceeds 20 percent of the acquiring company's assets, to expand from 20 percent to 50 percent the relative size criteria in the Board's interpretation at § 225.132 of Regulation Y. The Board believes that such an expansion of the criteria would not materially affect the ability of the System to supervise the acquisition of nonbank assets by bank holding companies, and it would place banking organizations on a more comparable footing with nonbanking competitors in making acquisitions.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that the amendments would have a significant adverse economic impact on a substantial number of small entities. The amendments would reduce regulatory burdens imposed by the Board's procedures on bank holding companies, and have no particular adverse effect on other entities. These amendments are expected to have a particular benefit to small bank holding companies, which are the companies that are primarily affected by the limits that have been raised or removed by these amendments.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends title 12 of the Code of Federal Regulations, part 225, to read 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, 1831(i), 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351, and sec. 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. No. 102-242, 105 Stat. 2236 (1991)).

2. Section 225.12 is amended by redesignating paragraphs (d) heading and introductory text, (d)(1), and (d)(2) as paragraphs (d)(1) heading and introductory text, (d)(1)(i), and (d)(1)(ii), respectively, and by adding a new paragraph (d)(2) to read as follows:

§225.12 Transactions not requiring Board approval.

* * * * *

(d)(1) * * *

(2) *Certain acquisitions subject to the Bank Merger Act.* The acquisition by a bank holding company of shares of a bank or company controlling a bank as part of the merger or consolidation of the bank with a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, or the purchase of substantially all of the assets of the bank by a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, if—

(i) The bank merger, consolidation, or asset purchase occurs simultaneously with the acquisition of the shares of the bank or bank holding company, and the bank is not operated by the acquiring bank holding company as a separate entity other than as the survivor of the merger, consolidation or asset purchase;

(ii) The transaction requires the prior approval of a Federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c));

(iii) The transaction does not involve the acquisition of any nonbank company that would require prior approval under section 4 of the Bank Holding Company Act (12 U.S.C. 1843);

(iv) Both before and after the transaction, the acquiring bank holding company meets the Board's Capital Adequacy Guidelines (appendices A and B); and

(v) The acquiring bank holding company has provided written notice of the transaction to the Reserve Bank at least 30 days prior to the transaction,

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and during that period, the Reserve Bank has not informed the bank holding company that an application under § 225.11 is required.

* * * * *

3. Section 225.23 is amended by revising paragraph (f)(2)(i), and by republishing paragraph (f)(2) introductory text, to read as follows:

§225.23 Procedures for applications, notices, and hearings.

* * * * *

(f) *Expedited procedure for small acquisitions*—* * *

* * * * *

(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 the greater of:

(A) $15 million; or

(B) 5 percent of the consolidated assets of the acquiring company up to a maximum of $100 million;

* * * * *

4. Section 225.132 is amended by revising the second sentence in paragraph (c)(2) to read as follows:

§225.132 Acquisition of assets.

* * * * *

(c) * * *

(2) * * * For purposes of this interpretation, an acquisition would generally be presumed to be significant if the book value of the nonbank assets being acquired exceeds 50 percent of the book value of the nonbank assets of the holding company or nonbank subsidiary comprising the same line of activity.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 23, 1992.

William W. Wiles,

Secretary of the Board.

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