FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10573**
September 15, 1992]

MEASURES TO REDUCE THE REGULATORY BURDEN AND STREAMLINE APPLICATIONS PROCESSING

Applications under Regulations H and Y

Comments Invited by October 28

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

The following is from a statement issued by the Board of Governors of the Federal Reserve System concerning certain actions that the Board has taken to reduce the regulatory burden and streamline its approval procedures:

> The Federal Reserve Board has approved additional measures to reduce the regulatory burden and further streamline the process of handling applications from State member banks and bank holding companies.
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> Last April, as part of its program to reduce the regulatory burden, the Board directed its staff to review the processes used in handling applications to ensure greater efficiency. The review included information required, timing, procedures for pre-acceptance review, delegation, standardization of forms and monitoring the status of cases.
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> Measures now approved by the Board will:
>
> — Limit extensions of the period for accepting applications from banks and bank holding companies.
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> — Offer prospective applicants the opportunity to submit a pre-filing notice of intent to file a formal application.
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> — Establish a general consent limit for investments in bank premises for State member banks that are well capitalized and in satisfactory condition.
>
> — Eliminate the stock redemption notice requirement for bank holding companies that are well capitalized and in satisfactory condition.
>
> — Expand the authority of Reserve Banks to process all delegable applications without Board staff review.
>
> — Modify the Board's delegation rules that pertain to competition and market concentration.
>
> — Reduce redundant processing of cases acted upon by the Board.

Printed on the following pages is the text of the Board's notice on this matter, which has been reprinted from the *Federal Register* of September 1. Comments regarding the actions currently being taken and on further steps that might be taken to improve efficiency in the applications process should be submitted by October 28, and may be sent to the Board of Governors, as specified in the notice, or to our Banking Applications Department.

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0773]

Applications Under Regulation H and Regulation Y

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board's Regulation H and Regulation Y establish procedures and provide guidance for obtaining Board approval for various transactions that are subject to Board review under the Federal Reserve Act, the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act and various other statutes. The Board periodically reviews these procedures in an attempt to reduce burden associated with these procedures and to ensure that these processes function as efficiently as possible consistent with statutory requirements. As a result of this review, on August 12, 1992, the Board approved several proposals to change certain applications procedures to improve efficiency and reduce regulatory burden in the applications process. These changes include establishing certain procedures to limit extension of the pre-acceptance period for applications; offering prospective applicants the opportunity to submit a pre-filing notice of intent to file an application; eliminating the stock redemption notice requirement for bank holding companies that are and, following the redemption would remain, "well capitalized" on a consolidated basis and in generally satisfactory condition; expanding the authority of Reserve Banks to process all delegable applications without Board staff review; modifying the Board's delegation rules pertaining to competition and market concentration; reducing redundant post-acceptance processing of Board action cases; increasing the monitoring of cases requiring extended processing; and inviting public comment on a proposal to establish a general consent procedure under section 24A of the Federal Reserve Act for investments by state member banks in bank premises.

In addition to taking these steps, the Board invites public comment on any other ways in which the burden on applicants associated with the various application and notice procedures in the Board's regulations may be reduced, consistent with the Board's responsibilities and obligations under the relevant statutes.

DATES: Comments must be received by October 28, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0773, 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 of 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: Scott G. Alvarez, Associate General Counsel (202/452-3583), Robert D. Frierson, Managing Senior Counsel (202/452-3711), or Terence F. Browne, Attorney (202/452-3707), Legal Division; or Sidney M. Sussan, Assistant Director (202/452-2638), Beverly Evans, Supervisory Financial Analyst (202/452-2573), or Nicholas A. Kalambokidis, Supervisory Financial Analyst (202/452-3830), Division of Banking Supervision and Regulation, 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: The Federal Reserve System (System), has taken a number of significant steps over the past two decades to improve the overall efficiency of its processing of applications. The Board has recently reviewed its applications procedures again, and has taken a number of additional steps, described below, to reduce the burden associated with these procedures. The Board will implement the changes described in this notice immediately.

In addition, the Board invites comment on any additional steps the Board may take to improve the efficiency and increase the effectiveness of the applications process. In particular, the Board invites public comment on any other steps that the Board should consider for revising or streamlining the applications and notice procedures under the Board's rules to reduce the burden on applicants of these procedures without impairing the Board's ability to fulfil its statutory obligations in reviewing these proposals.

Explanation of Board Actions to Date to Reduce Regulatory Burden

Overview of Applications Processing

The System has, for the past 15 years, met the Board's publicly articulated goal of processing 90 percent or more of System-wide applications within a self-imposed processing deadline (currently, 60 days from acceptance). During that time, more than 35,000 applications and notices have been processed, including approximately 10,000 nonbanking activity applications and notices, approximately 8,300 bank holding company formation applications, and 5,800 bank acquisition applications. The number of applications and notices

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processed each year increased during the late 1970s and early 1980s to a peak of approximately 3,000 in 1983. Annual volumes declined in the mid 1980s, but then increased back up to the 3,000 level in 1991.

Over the past several years, approximately 14 percent of applications were processed for Board action, 52 percent were processed under delegated authority with Board staff review, and the remaining 34 percent were processed under delegated authority without Board staff review. The average post-acceptance processing time per application generally has declined to a low of 33 days in 1991. The average processing time for delegated cases has been significantly below the average processing time of the typically more complex Board action cases. In 1991, the average processing time for delegated cases was 28 days, compared to 50 days for Board action cases.[1] In comparison, in 1986 the average post-acceptance processing time per application was 30 days: the average processing time was 32 days for delegated cases and 71 days for Board action cases.

Based on its experience in reviewing proposals under the Federal banking laws, the Board has made a number of revisions to the applications process designed to improve the efficiency of the process and reduce burdens on interested parties to the process. Reserve Banks have been delegated substantial authority; application forms have been streamlined consistent with the Paperwork Reduction Act; unnecessary application procedures have been eliminated and notice procedures have been substituted for applications where appropriate under the statutory framework; information requirements for certain activities have been reduced; Board standards and policies have been more widely disseminated; internal time guidelines for reviewing and acting on proposals have been voluntarily imposed by regulation, and, after experience, substantially shortened. These efforts have resulted in the ability of the System to process more quickly a large number of increasingly complex applications with staffing levels that have remained relatively constant.

On April 22, 1992, as part of a broad review of the Board's regulations, policies, and reports, the Board requested that staff conduct a review of various aspects of the applications process. This review has resulted in several final and proposed changes to the Board's applications rules. For example, the Board determined to substantially lessen the information required of a state member bank—in satisfactory conditions and with satisfactory community reinvestment and consumer compliance ratings—applying to establish additional branches. In an effort to facilitate acquisitions by nonbank subsidiaries of bank holding companies, the Board also revised Regulation Y to increase the applicability of its expedited applications procedure for small nonbank acquisitions. This revision, which became effective on June 29, 1992, increased the size of acquisitions that could be made after expedited procedures from a maximum of $15 million to a maximum of the lesser of $100 million or 5 percent of the applicant's consolidated assets, subject to certain criteria. The Board also increased the relative size of nonbank assets (from 20% to 50%) that may be acquired by a bank holding company in the ordinary course of business without any prior System approval, and established criteria for determining whether an application under the Bank Holding Company Act may be waived for transactions involving certain bank mergers.[2]

As a result of this review, the Board also requested comment on other proposals to reduce regulatory burden. In particular, on June 29, 1992, the Board published for comment proposed regulatory amendments that would reduce from twice to once the number of times notice must be published in a newspaper of general circulation of the filing, with the Board, of certain applications under the Federal Reserve Act and the Bank Holding Company Act.[3] These amendments, intended to reduce the burden associated with the Board's notice requirements, would have no effect on the length or timing of public comment periods, which currently start when the first notice is published. At the same time, the Board also published for comment a proposed rule that would exempt from the limitations of section 23A of the Federal Reserve Act the transfer of assets and liabilities between affiliated insured depository institutions when such transfer is part of the merger or consolidation of the affiliated institutions.[4] This proposed exemption would be available for transactions requiring the approval of the resulting insured depository's primary regulator under the Bank Merger Act.

As part of the April review, the Board also directed staff to analyze the extent of the information being required in applications, timing considerations and procedures for pre-acceptance review and post-acceptance analysis of applications, standardization of application forms, and procedures for Board monitoring of the status of cases that exceed internal processing guidelines. This analysis had two primary objectives:

(1) To determine whether applications are being processed as efficiently as possible; and

(2) To identify opportunities to increase efficiency and/or reduce regulatory burden on the banking industry without jeopardizing important public policy objectives or the Board's ability to fulfill specific statutory objectives. This review was particularly focused on issues affecting processing time and duplication of effort, and this review resulted in several additional changes to certain applications procedures to improve efficiency, eliminate redundancy and otherwise reduce regulatory burden in the applications process.

Based on the Board's review, the Board has determined to take the following steps.

Change No. 1: Implementation of Certain Procedures to Limit Extension of the Pre-Acceptance Period for Applications

The goal of the pre-acceptance review is to assure that a reasonably complete record on which to base an analysis and supportable action has been established at the inception of the formal processing period. The review is generally conducted by Reserve Bank staff although Board staff, usually at the request of the Reserve Bank, also may participate in pre-acceptance review.

There is a common perception that pre-acceptance processing has resulted in unnecessary delays in the processing of applications. This perception is largely a result of certain conflicting considerations that often exist during the pre-acceptance period. The applicant often elects, or is required, to publicly announce a transaction soon after an agreement which circumscribes the transaction has been reached. From the applicant's perspective, this announcement may signal the beginning of the "processing period", yet the actual submission of the application

[1] In 1991, the average processing time for domestic delegated cases that required Board staff review was 29 days, compared to 25 days for domestic delegated cases not requiring Board staff review.

[2] 57 FR 28777, June 29, 1992.

[3] 57 FR 28807, June 29, 1992.

[4] 57 FR 28809, June 29, 1992.

may not occur for several weeks or even months after the announcement. To a large extent, both the timing and the quality of a submission are within the applicant's control, regardless of efforts the System may make to facilitate the process. Board and Reserve Bank staff, faced with the responsibility of completing processing under a tight time schedule, understandably are reluctant to accept a submitted application until most of the factors requiring the Board's consideration are addressed.

The System has taken a number of steps through the years to attempt to address applicants' concerns with the pre-acceptance process. These efforts include a willingness to accept and review draft applications, periodic reviews and modifications of the application forms, and an "open-door policy" permitting prospective applicants to discuss informally their proposals with Board or Reserve Bank staff.

In an attempt to monitor the timing of pre-acceptance activities, the System has adhered to formal timing guidelines in pre-processing most applications. If an applicant chooses to submit an application in draft, the draft application is to be reviewed for no more than 10 business days, with up to 3 additional business days for complicated applications. At the end of this period, the Reserve Bank must return the application to the applicant with comments. Once a formal application is received, the Reserve Bank has no more than 10 business days to either accept the application for processing, return the application to the applicant as materially deficient, or request additional information from the applicant. If more information is requested, the applicant has 8 business days in which to respond, after which the Reserve Bank has up to 5 business days to review the submission. At this point, the Reserve Bank must either accept the application for processing (under either delegated authority or for Board action) or return it.[5]

The pre-acceptance timing guidelines were last tightened in 1983 from a 13-10-6-day standard to the current 10-8-5-day standard. Given weekends and holidays, the current pre-acceptance process can take up to approximately 34 calendar days to complete if each step requires the maximum number of days.

When organizations are contemplating a large acquisition or a sophisticated proposal, the Reserve Banks often have encouraged the applicant to file a draft application. The Reserve Banks believe that the filing of a draft application in these cases helps both the System and the applicant identify and address potential issues early in the process. Although the filing of a draft application may result in fewer questions being asked during the official pre-acceptance process, such filing may extend the total application processing period.

The Board always has considered draft applications to be an option available to an applicant, but the Board's rules do not require the filing of a draft under any circumstance. In this regard, the Board emphasizes that draft applications are not required for any proposals, and may be filed when an applicant determines in its discretion to do so.

There have been cases in which Reserve Banks have not returned an incomplete application at the end of the pre-acceptance process, and instead have accepted the application after expiration of the time provided in the Board's regulations governing the pre-acceptance process. The Reserve Banks have taken this step generally in an effort to reduce the applicant's burden of refiling the application.

When the Board implemented its regulations establishing a pre-acceptance schedule, the Board indicated that it intended the Reserve Banks to abide by this schedule and to return incomplete applications at the end of the period. The Board has determined to increase monitoring efforts to ensure that the Reserve Banks abide by the pre-acceptance schedule. To address the possibility that an applicant may be able to complete an application if given a brief extension of the pre-acceptance process, the Board believes that an extension of the pre-acceptance review period should be permitted only where the applicant files a written request for such an extension.

Change No. 2: Offering Prospective Applicants the Opportunity to Submit a Pre-Filing Notice of Intent to File an Application

The information used in processing an application comes from four sources: the applicant, the System, other state and federal agencies, and the public. Each application form is intended to enable the System to gather essential information needed to make a reasoned judgment about the proposal. The formal questions in the application form are not intended to limit the applicant's presentation, but are designed to provide a sufficient record in a majority of cases if answered fully and appropriately. The applicant bears the burden of presenting and documenting a case to meet the statutory criteria for approval, and is invited to submit any additional information that may support its proposal.

All applicants use the same application form for the same type of transaction regardless of the condition of the applicant or differences in the structure of the transaction. For example, bank holding company applications to acquire additional banks are filed on a given application form, and all applications to engage in nonbanking activities are filed on another form.

The application forms contain sunset dates and are reviewed and updated periodically through the System review process. The information requested in these forms has been streamlined significantly over the past several years in an attempt to limit requests for extraneous information, less frequently needed information, and information that is otherwise readily available to the System.

At the same time, however, there is some evidence that an applicant's initial submission is becoming, on average, less adequate because of a general increase in the complexity of proposed transactions and because of a lack of focus on emerging critical issues. As a result, a growing volume of information is being requested during Reserve Bank pre-acceptance processing and post-acceptance communications between both Board and Reserve Bank staff and the applicant. Although the reasons for additional information being requested varies, common reasons include:

- Application forms are not designed to request information on issues that may be unique to a particular proposal or that involve certain issues that may vary by proposal but are, nonetheless, significant, such as information regarding CRA performance and programs, risk assessment involving various complex activities, employment agreements, and commitment requirements for proposed nonbanking activities;
- Required follow-up on developments at subsidiaries in less than satisfactory condition or with sub-par CRA performance; and
- Information necessitated by comments or protests on a proposal.

Applicants occasionally provide more information than is needed by the System to process a given application. In some of these cases, the applicant is endeavoring to anticipate possible future questions; in general, however, the additional information is comprised of readily available information.

[5] Current procedures do not provide for a second request for information during pre-acceptance processing.

In some cases, time and expense can be avoided if the applicant is provided with early feedback on a proposal. Although the draft application is intended to serve as a vehicle for early feedback, in some cases, a pre-filing notice should more effectively achieve the same goals and be less burdensome to the applicant. The submission of a pre-filing notice is entirely voluntary. It would not detract from the applicant's opportunity to file a draft application, although the Board believes that the notice could diminish the need for a draft application.

The pre-filing notice should contain little more than a description of the proposal, and may be communicated to the Reserve Banks in writing or at a face-to-face meeting. After a brief review of the proposal, the Reserve Bank will then discuss with the prospective applicant what, if any, unusual or particular information beyond what is requested in the application form will likely be needed to process the application. This should enable the applicant to better focus on the issues in an application that are likely to be of greatest concern. Accordingly, the Board has determined to offer to prospective applicants the opportunity to submit a pre-filing notice of intent to file an application.

Change No. 3: Elimination of the Stock Redemption Notice Requirement for Bank Holding Companies That are and, Following the Redemption, Would Remain "Well Capitalized" on a Consolidated Basis and in Generally Satisfactory Condition

Bank holding companies currently are required under Regulation Y to submit a written notice before purchasing or redeeming their 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.[6] This notice requirement is a prudential requirement imposed by the Board to monitor the capital levels of bank holding companies, and is not a statutory requirement.

The Board has determined that a bank holding company that is and will continue to be "well capitalized" and in generally satisfactory condition should not be required to file this notice prior to the redemption of its stock. The Board believes that the elimination of this notice requirement for companies that meet the criteria noted above would not compromise safety and soundness concerns.

Change No. 4: Expansion of the Authority of Reserve Banks to Process All Delegable Applications Without Board Staff Review

Upon accepting an application, the System currently has four basic procedures for processing the application:

(1) *Board Action ("Nondelegated action")*—Applications analyzed by both Reserve Bank and Board staff, and presented to the Board for action, normally within a 60-day time frame.

(2) *Delegated Action with Prior Board Staff Review*—Applications analyzed by both Reserve Bank and Board staff, and approved by the Reserve Bank, normally within a 30-day time frame if no delegation criterion is violated.

(3) *Delegated Action without Prior Board Staff Review*—Applications analyzed only by Reserve Bank staff, and approved by the Reserve Bank, normally within a 30-day time frame.

(4) *Delegated Action for Small Nonbank Activities*—Applications involving certain small 4(c)(8) proposals analyzed by Reserve Bank staff, and approved with prior review by Board staff, normally within a 15-day time frame.

The criteria for processing applications under delegated authority are enumerated in the Board's Rules Regarding Delegation of Authority,[7] and allow for Reserve Bank approval unless one or more of the following conditions is present:

(i) A member of the Board has indicated an objection prior to the Reserve Bank's action;

(ii) The Board has indicated that such delegated authority shall not be exercised by the Reserve Bank in whole or in part;

(iii) A written substantive objection to the application has been properly made;

(iv) The application raises a significant policy issue or legal question on which the Board has not established its position;

(v) With respect to BHC formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations:

(A) That upon consummation of the proposal, would control over 30 percent of total deposits in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a post-merger HHI of at least 1800); or

(B) Where divestitures designed to address any substantive anticompetitive effects are not effected on or before consummation of the proposed transaction;

(vi) With respect to nonbank acquisitions, the nonbanking activities involved do not clearly fall within activities that the Board has designated as permissible for bank holding companies under § 225.25(b) of Regulation Y.

As explained above, a subset of applications delegated to Reserve Banks currently may be approved without prior Board staff review. In 1991, 1,034 cases, or 34 percent of all applications processed by the System, were approved under delegated authority without Board staff review. In general, these cases must be "non-complex" and satisfy certain well-established financial and competitive criteria. These criteria were last revised at the end of 1990, at which time the range of proposals eligible for Reserve Bank approval without prior Board staff review was expanded. At the same time, the types of applications that could be processed without Board staff review also was expanded to include applications involving capital note requests, certain investments in bank premises, state member bank mergers involving unaffiliated banks, state bank memberships, change in bank control notifications, and director interlocks under the Management Interlock Revision Act of 1988.

Although each of the three delegated procedures described above allow for Reserve Bank approval, only the second category allows for Reserve Bank approval without concurrent Board staff involvement. In delegated cases that are subject to prior Board staff review, Board and Reserve Bank staff both analyze and review the case, although memoranda are not prepared for the Board because approval authority has been delegated to the Reserve Bank. In delegated cases that are not subject to prior Board staff review, all analysis and review is conducted at the Reserve Bank.

The internal timing guidelines for post-acceptance processing of delegated and Board action cases were last adjusted in 1983. The processing

[6] 12 CFR 225.4(b).

[7] 12 CFR part 265. The Board recently amended its delegation rules to eliminate certain numerical criteria that restricted a Reserve Bank's authority to act on applications involving: (a) Banking organizations that rank among a state's five largest banking organizations or among the 50 largest banking organizations in the United States; and (b) the acquisition of certain large nonbanking companies by bank holding companies with over $1 billion in assets.

schedule for delegated cases was shortened from 45 days to 30 days and the processing schedule for Board action cases was reduced from 90 days to 60 days.

As discussed above, Reserve Banks over the years have been given greater responsibility in processing applications. Reserve Banks also have been given the authority to process a larger variety of increasingly complex activities and proposals. The Board has determined to broaden the Reserve Banks' responsibilities further by giving the Reserve Banks the authority to process all delegable cases without Board staff review. According to the System's processing trends over the past few years, this change could eliminate the duplication of efforts by the Board and Reserve Bank staffs on approximately half of the total applications and notices processed by the System.

Although the Board believes that some improvement in average processing times will result from streamlining the processing of delegated applications, the Board believes there are two more important benefits that will result. First, a reduction in Board staff involvement should permit closer alignment of Reserve Bank authority with responsibility and should facilitate increased objectivity in measuring performance. Second, streamlining of delegated cases should permit more effective allocation of Board staff resources to work on the larger and more complicated cases that go to the Board, resulting in more efficient and timely processing of these cases. In addition, the Board believes that this change will enable Board staff to more effectively assist with pre-acceptance reviews of cases that are likely to be accepted for Board action, which should facilitate earlier identification of issues and result in fewer post-acceptance requests for information.

Because this change does not expand the types of cases that are delegable, the Reserve Banks essentially will be processing cases in which they have had prior experience. The Board's views on specific policy issues and legal questions which may affect the determination to delegate a case will continue to be communicated to the Reserve Banks through monthly conference calls, periodic meetings and conferences, Supervision and Regulation (SR) letters, and distribution of case memoranda and Board Orders. To ensure that the System's policies and procedures are being applied consistently across the System, Board staff will continue to monitor processing of applications through operational reviews of Reserve Banks, after-the-fact reviews of selected case files, SR letters, conference calls, and System meetings. In addition, Reserve Bank staffs will be expected to continue to consult with Board staff on issues and problems as they arise.

Change No. 5: Modification of the Board's Delegation Rules Pertaining to Competition and Market Concentration

Recent experience indicates that applications not meeting the Board's rules for delegation solely because the combined market share of the merging firms is slightly over 30 percent generally do not raise competitive concerns. Furthermore, in many applications the increase in the HHI is well under 200. For example, an application representing the combination of banks with respective markets shares of 30 percent and 1 percent would result in an increase in the HHI of only 60 points, but would not be a delegable case.[8] Consequently, the Board has determined to increase the market share criterion from 30 percent to 35 percent. Although it is difficult to specify the exact level at which a proposed merger would be viewed as an antitrust violation based on the resulting market share, the Board believes that 35 percent would be a reasonable level and would conform with the Justice Department's treatment of market concentration.[9]

The Board also has determined to modify the delegated processing criterion that an applicant proposing divestitures to meet competitive concerns must complete the divestiture on or before consummation of the proposed transaction. The Board has established its position on the timing of divestitures in several recent Board Orders.[10] The Board has stipulated that applicants may be given up to six months after consummation to complete a divestiture provided that, prior to consummation, the applicant has entered into a binding agreement with another party to acquire the relevant offices. If the divestiture is not accomplished within this time frame, the branches to be divested must be placed with an independent trustee for immediate sale. The Board has determined to modify its criterion for delegated action to reflect this position on competitive divestitures.

With these two changes, the Board's fifth delegation limitation would read as follows:

(v) With respect to bank holding company formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations that, upon consummation of the proposal, would control over 35 percent of total deposits (includes 50 percent of thrift deposits) in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a post-merger HHI of at least 1800).

Change No. 6: Reduction of Redundant Post-Acceptance Processing of Board Action Cases

In processing Board action cases, both the Reserve Bank and Board staff analyze the proposal, recommend action, and prepare memoranda for the Board. The memoranda often are redundant and because the Reserve Bank must prepare its memorandum prior to completion of Board staff memoranda, the Reserve Bank memorandum may contain information that is not as current as the information in Board staff memoranda. In addition, communications between the applicant and the System are occasionally duplicated.

The Board has determined to give the Reserve Banks more discretion to determine the extent of their involvement in the post-acceptance analysis and memoranda writing on Board action cases. The Reserve Banks will continue to receive applications and perform pre-acceptance analysis on all applications. For applications accepted for Board action processing, the Reserve Banks generally will determine the extent of their subsequent involvement. The Board expects that Board staff will request the Reserve Banks to provide analysis for some cases in the same manner that the Reserve Banks currently analyze cases. In other cases, however, the Reserve Banks may elect

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[8] The increase in the HHI is calculated by multiplying the product of the respective market shares of the institutions involved in the transaction by 2. In other words, the increase in the HHI is determined by the formula 2xy, where x and y represent the respective market shares of the merging firms.

[9] The Department of Justice guidelines include what is called a leading firm proviso under which the department is likely to challenge the acquisition by the leading firm in a market of any firm that has a market share of 1 percent or more. The Department of Justice considers a company to be a leading firm if it has a market share of at least 35 percent and this share is approximately twice as large as that of the second largest firm.

[10] *See e.g., BankAmerica Corporation*, 78 Federal Reserve Bulletin 338, 340 n.15 (1992).

not to participate in post-acceptance analysis or to participate to a limited extent in a more focused manner.

This change will preserve the Reserve Bank's opportunity to present its views on an application or on an issue raised by a particular proposal, and should, in the case of requested comments, provide further support for the record in cases where the Reserve Bank's knowledge of local conditions would be especially beneficial. For example, Reserve Bank involvement can be an essential element in the timely resolution of protested issues.

In addition to the efficiency benefits of reducing duplicative processing in general, and memoranda writing in particular, this change also will give the Reserve Banks greater flexibility in allocating their resources. For example, resources that are currently devoted to the post-acceptance processing of certain Board action cases could be shifted to time sensitive delegated cases or to pre-acceptance meetings with prospective applicants.

Change No. 7: Increased Monitoring of Cases That Require Extended Processing

As part of the System's current overall process of monitoring applications activity, closer scrutiny is given to cases that are not on schedule for timely processing or have exceeded targeted action dates. Once a week, managers responsible for applications processing from the appropriate Board divisions (or their representatives), meet to discuss each application that is scheduled for Board action as well as other applications of interest. Previously delegated cases that have not been acted on within 30 days also are discussed at these meetings, as these cases usually have already been transferred to Board action status. The basis for this discussion is a weekly status report of applications filed with the System that is distributed to managers and others involved in the process.

Any bank holding company whose application does not meet the internal timing target, regardless of the reason or responsible party, receives a letter explaining the delay as required by Regulation Y.[11] A member of the Board must approve the letter before it is sent. Other monitoring efforts include an agenda scheduling report, monthly conference calls, and an annual applications processing conference. Applications being processed under delegated authority are tracked by either the Reserve Bank or Board staff on an ongoing basis. More intense scrutiny typically is given to each case in which one-half of the processing period for the application has elapsed without action having been taken or without action being imminent.

Although the System monitors all phases of the applications process, the Board has emphasized the importance of minimizing the processing period and burden on the applicant associated with the entire process. Current monitoring efforts of applications are driven primarily by the post-acceptance, 60-day internal processing guideline, and to a lesser extent by the totalamount of time an applicant needs to obtain regulatory approval. In an effort to heighten management's focus on this timing issue, the Board has determined that a new report will be developed. The report will be organized in chronological order and will include the total length of time an application is in process and an explanation of the application's status. The report will be distributed to the directors of the divisions that are involved in the applications process.

Change No. 8: Establishing a General Consent Limit for Investments in Bank Premises for State Member Banks

Section 24A of the Federal Reserve Act requires state member banks to obtain the Board's approval prior to making investments in bank premises that would result in the bank's aggregate level of direct and indirect investment in bank premises exceeding the bank's capital stock account.[12] The Board has determined to amend Regulation H to establish a general consent procedure that would allow a "well capitalized" state member bank that is also in generally satisfactory condition to make bank premises investments up to a certain percent of the bank's capital accounts. This would eliminate the current requirement that a state member bank obtain approval for each investment in bank premises that exceeds the bank's capital stock. A proposed revision to Regulation H to accomplish this goal, and a request for comments on this proposal, will be published shortly in a separate notice.

Invitation for Public Comment

As described above, the Board invites public comment on any additional proposals or measures the Board should consider for revising or streamlining the applications and notice procedures under the Board's rules to reduce the burden on applicants caused by the current procedures without impairing the Board's ability to fulfil its statutory obligations in reviewing applications and notices requiring Board approval.

Regulatory Flexibility Act Analysis

The Board is inviting public comment on proposals to reduce regulatory burdens imposed by the Board's procedures on bank holding companies. 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 these changes will have a significant adverse economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes, and comment is invited on proposals that may reduce the current information collection requirements imposed in connection with various applications.

Board of Governors of the Federal Reserve System, August 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

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[11] 12 CFR 225.14(d)(2).

[12] 12 U.S.C. 371d. Section 24A applies to: (1) Investments in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank; and (2) the making of loans to or upon the security of the stock of any such corporation.