FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10577**
September 28,1992]

REDUCTIONS IN REGULATORY BURDEN FOR BANKING APPLICATIONS

— Newspaper Publication Requirements

— Transactions with Affiliates

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

Effective October 13, 1992, the Board of Governors of the Federal Reserve System has reduced, from two to one, the number of newspaper notices required to be published for applications involving membership in the Federal Reserve System, establishment of branches of State member banks, bank mergers, bank holding company formations, and the acquisition of a bank by a bank holding company.

Effective September 11, 1992, the Board of Governors also adopted a rule to exclude from section 23A of the Federal Reserve Act transactions between affiliated insured depository institutions that are subject to review under the Bank Merger Act. The exclusion is intended to eliminate the need for duplicative Federal filings.

Enclosed, for bank holding companies and others who maintain sets of the Board's regulations, is an excerpt from the *Federal Register* of September 11, containing the texts of the Board's official notices of these actions. Additional, single copies may be obtained at this 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).

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

E. Gerald Corrigan,
President.

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Amendments to Regulation Y, Rules of Procedure, and Miscellaneous Interpretations

1. Newspaper Publication Requirements
(Docket No. R-0760)
Effective October 13, 1992

2. Transactions with Affiliates
(Docket No. R-0762)
Effective September 11, 1992

[Enc. Cir. No. 10577]

Rules and Regulations

Federal Register
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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: Final rule.

SUMMARY: The Board has revised 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 the Rules requires applicants to publish two newspaper notices 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 (BHC Act) (to form a bank holding company or for a bank holding company to acquire a bank). These revisions would reduce from twice to once the number of times notice of an application must be published in a newspaper. 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 BHC Act applications, notices published in the **Federal Register**.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), Oliver I. Ireland, Associate General Counsel (202/452-3625), 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).

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.

In July of this year, the Board invited public comment on a proposal 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 revisions would reduce one 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. The Board also proposed parallel amendments to § 225.14(b) of its Regulation Y (12 CFR part 225) to conform this provision with the revised notice requirements.

The Board sought comment on whether the action would have a serious adverse effect on actual notice of applications and on the opportunity for public comment. The Board also requested comment on the benefits that reducing the publication burden would have compared to the reduction in required newspaper notice. The Board received 17 public comments regarding this proposal. All except two of the commenters support the Board's proposal to reduce the number of newspaper publications. Twelve of the commenters, all bank holding companies, believe that the proposal would reduce the costs and paperwork burden associated with applications that are subject to the newspaper publication requirement.[1] These commenters also believe that the reduction of the newspaper publication requirement would not interfere with the public's ability to submit timely comments with respect to a proposed application since alternative sources of notice such as the **Federal Register** and lists of pending applications prepared by the Board and the Reserve Banks are available.

Two commenters opposed the proposal. Both commenters believe that the proposed reduction in the newspaper publication requirement would decrease the likelihood that the newspaper notice will reach the public making it more difficult for community groups to file comments, and would provide little cost savings to applicants. These commenters noted that because of cost constraints, very few community groups subscribe to the **Federal Register**. The commenters also indicate that the additional newspaper publication requirement would counteract any inaccuracies or omissions that may be contained in the Federal Reserve publications.

Newspaper notice is statutorily required for applications filed pursuant to the Bank Merger Act. For applications filed pursuant to section 9 of the Federal Reserve Act (to establish branch offices or for membership in the Federal Reserve System) or section 3 of the BHC Act (to form a bank holding company or for a bank holding company to acquire a bank), for which no statutory notice is required, newspaper notice has been provided as a matter of policy in order

[1] Three Reserve Banks and one trade association also commented in favor of the proposal.

to permit commenters an opportunity to provide the Board with additional information useful to the Board's evaluation of a pending proposal.[2]

Publication in the **Federal Register** has been the primary means of notice used by the Board to inform the public of pending proposals. The Board believes that a reduction from two to one of the newspaper notice requirement would reduce burden on applicants without significantly reducing the effectiveness of the notice given to the public. In addition to the remaining notice of publication in the newspaper, the public would continue to be made aware of pending applications through various other sources, including public announcement by the applicant (often well in advance of the actual regulatory filing) and weekly publications by both the Board and each Reserve Bank which list, at a minimum, the applications received involving banking organizations in the respective jurisdictions. The Board believes that the retention of at least one newspaper publication requirement is an effective way to notify those members of the general public that may wish to comment on a proposed transaction, and for commenters who may not have access to the **Federal Register** or the weekly publications by both the Board and the Reserve Banks which list pending applications.

The final rule would **not** reduce the amount of time that interested persons would have to provide comments to the Board. That period would continue to be 30 days in general. In addition, the final rule would retain the requirement that newspaper notice must appear no more than ninety calendar days prior to acceptance of an application. This requirement helps to assure that the notice is timely.

Following review of the comments, the Board believes that the elimination of one newspaper publication requirement would not unduly interfere with the ability of the public to submit comments with respect to a proposed application. At the same time, the reduction in a newspaper publication notice would reduce the costs and paperwork burden to applicants associated with filing such applications.

[2] This proposal would reduce the number of times newspaper notice must be published for acquisitions of savings associations to coincide with the publication requirements for acquisitions of banks. Generally, the Board has not required newspaper publication for other proposals to acquire nonbanking interests or engage in nonbanking activities pursuant to section 4 of the BHC Act. As a matter of policy, the Board has required bank holding companies to publish notice in appropriate newspapers of any proposals to acquire savings associations pursuant to 12 CFR 225.25(b)(9).

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 affected depository institutions, reduce certain burdens for small depository institutions, and have no particular adverse effect on other small entities.

Paperwork Reduction Act

The Board, acting pursuant to authority delegated to it by the Director of the Office of Management and Budget under 44 U.S.C. 3507(e), has approved the collection of information called for by part 225 of the Board's Rules.

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 amends 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 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. 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.

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PART 262—RULES OF PROCEDURE

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

Authority: 5 U.S.C. 552.

2. Section 262.3 is amended 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 words "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. * * *

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§ 262.3 [Amended]

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

§ 262.25 [Amended]

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

By order of the Board of Governors of the Federal Reserve System, September 4, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-21880 Filed 9-10-92; 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: Final Rule.

SUMMARY: The Board is adopting a rule to exclude from section 23A of the Federal Reserve Act transactions between affiliated insured depository institutions that are subject to the Bank Merger Act. The exclusion would be available only for transactions that are approved by the appropriate federal banking agency under the Bank Merger Act. The exemption would be available by regulation, and transactions that meet the proposed criteria will not require additional Board review under section 23A. The exclusion is intended to reduce unnecessary regulatory burden by eliminating the need for duplicative federal applications.

EFFECTIVE DATE: September 11, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher J. 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:

Background

Section 23A of the Federal Reserve Act (12 U.S.C. 371c) governs the ability of an insured depository institution to lend to or purchase assets of an affiliate. Through its applicability to the purchase of assets, section 23A covers a situation in which an insured depository institution merges with, or purchases all or substantially all of the assets of, an affiliate insured depository institution, unless one of the exemptions in section 23A applies or the Board uses its general authority to grant a case specific exemption. Merger and similar asset acquisition transactions between insured depository institutions are also subject to review and approval by the primary federal banking or thrift authority under the Bank Merger Act (12 U.S.C. 1828(c)) for safety and soundness as well as competitive effects.

Section 23A provides an exemption from the quantitative and collateral restrictions of the statute for transactions between banks affiliated in a bank holding company system (12 U.S.C. 371c(d)(1)).[1] The Board also has not required a section 23A exemption to transfer low-quality assets between affiliated banks in a merger or similar asset acquisition transaction approved under the Bank Merger Act because of the review conducted under that statute of the safety and soundness aspects of the transaction. As a result, in such transactions, duplicative applications under the Bank Merger Act and section 23A have been avoided.

Affiliated thrift institutions became subject to section 23A in 1989 as a result of the enactment of FIRREA (12 U.S.C. 1468(a)(1)). While FIRREA applied section 23A to thrifts in the same manner as it applies to a member bank, FIRREA delayed until 1995 the ability of most thrifts to take advantage of the statutory exemption under section 23A for transactions between affiliated institutions in a holding company system (12 U.S.C. 1468(a)(2)).[2] Accordingly, before engaging in a merger or similar asset acquisition transaction, affiliated thrifts have since 1989 been required to obtain a specific exemption from the Board under section 23A even though the thrifts also must obtain an approval from the acquiring institution's primary federal regulator under the Bank Merger Act.

Section 23A provides the Board with general authority to act by order or regulation to grant specific exemptions from its provisions for transactions that the Board determines are in the public interest and consistent with the purposes of the statute. In considering requests for exemptions, the Board has reviewed carefully the effect of the transaction on the safety and soundness of the institutions involved. The legislative history of FIRREA further indicates that Congress intended this general exemptive authority to extend to transactions involving affiliated thrifts where an exemption is consistent with the purposes of section 23A and with prior Board exemptions. The Board has granted specific exemptions under section 23A for affiliated thrifts involved in merger transactions with the concurrence of the primary federal regulator (the Office of Thrift Supervision) which had conducted a safety and soundness review of the transaction under the Bank Merger Act.

In order to eliminate the need for these duplicative federal applications, the Board proposed to adopt an exemption from section 23A for transactions that are subject to review and approval under the Bank Merger Act.[3] Specifically, the Board proposed to exempt the purchase by one insured depository institution of all or substantially all of the assets of an affiliated insured depository institution, or the merger or consolidation of such institutions, in a transaction in which only one of the institutions continues to operate. The Board did so in light of the fact that in reviewing the Bank Merger Act application for such transactions, the primary federal regulator would conduct the safety and soundness analysis that the Board undertakes in reviewing the section 23A request.

Proposal as Adopted

The Board has determined to adopt the regulation as proposed with a modification to address an issue raised by several commentors and supported by the Office of the Comptroller of the Currency. The Board has determined that the exemption from section 23A should be modified to include all transactions between affiliated insured depository institutions that have been approved by the appropriate federal banking agency under the Bank Merger Act. In this regard, the Board has deleted the restriction in its proposal stipulating that as a result of the transaction only one of the insured depository institutions must continue to operate.

Response to Public Comments

In response to its proposal, the Board received 15 public comments: 10 by holding companies, 2 by law firms, and one each by a depository institution, a corporation, and a trade association. All the commentors favor the exemption because it would reduce regulatory burden and legal and compliance costs by eliminating duplicative regulatory filings. The commentors maintain that the proposal would pose no risk to the safety and soundness of the institutions involved in the transaction, the banking system, or the deposit insurance system because of the existing requirement for prior regulatory review of the transaction under the Bank Merger Act.

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[1] To be eligible for the exemption, the bank holding company must control at least 80 percent of the shares of the affiliated banks.

[2] Thrifts in a bank holding company system are eligible for the exemption if every thrift and bank controlled by the holding company meet all applicable fully phased-in capital rules without reliance on goodwill.

[3] 57 FR 28809, June 29, 1992.

Accordingly, the commentors feel the proposal is in the public interest.

Seven of the commentors also contend that the Board's reasoning supports broadening the proposal to include the other categories of merger or asset acquisition transactions that are subject to approval under the Bank Merger Act. These transactions are (1) the sale of a branch or a particular line of business by an insured depository institution to an affiliated insured depository institution,—a transaction in which both institutions continue to operate; and (2) a purchase of assets by an insured depository institution from a nonbank affiliate.

In light of these comments and in order to further reduce unnecessary regulatory burden, the Board has modified the proposal to include all transactions between affiliated insured depository institutions that are subject to review and approval under the Bank Merger Act. The Board notes that in such transactions a prior safety and soundness review under the Bank Merger Act will be performed and that such transactions permit the more flexible movement of assets to promote improved allocative efficiency among affiliated insured depository institutions.

The Board, however, has determined that transactions between an insured depository institution and a nonbank affiliate that are subject to the Bank Merger Act should not be automatically exempted from section 23A. The legislative history of section 23A and prior Board experience indicate that these transactions contain a greater potential for risk of loss to an insured depository institution and thus are appropriately subject to greater regulatory scrutiny. In this regard, certain of the 1982 amendments to section 23A were prompted by the adverse effect on banks that had resulted from transactions with their nonbank affiliates. Moreover, in analyzing prior section 23A requests, the Board has noted the potential adverse effect on an insured depository institution from such transactions and has granted exemptions only sparingly. Finally, an insured depository institution has no protection under FIRREA from losses incurred in transactions with its nonbank affiliates.[4] Accordingly, the Board has determined that these transactions should continue to be reviewed under section 23A on a case-by-case basis.

[4] The cross-guarantee provisions of FIRREA make insured depository institutions affiliated in holding company systems responsible for each others losses. 12 U.S.C. 1815(e).

Other Comments

Two commentors contend that the Board should include in the proposal all merger and asset acquisition transactions that are subject to approval by federal banking agencies under other federal statutes or regulations. The Board notes, however, that the factors or analysis that an agency considers under such statutes or regulations may be different from the factors or analysis considered under the Bank Merger Act or section 23A.

Finally, a commentor contends that the exemption should apply to all purchases of assets between affiliated insured depository institutions provided that the insured depository institutions perform the safety and soundness analysis required under the Bank Merger Act. The Board believes that such an exemption would not be consistent with the purposes of section 23A or in the public interest because of the potential for abuse to an insured depository institution from affiliate transactions that do not receive prior regulatory review and exceed the thresholds established in section 23A. Accordingly, the Board has determined not to modify the exemption to include these other two categories of transactions.

Final 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 of the Federal Reserve Act and have no particular adverse effect on other entities.

Effective Date

The provisions of the Administrative Procedures Act (APA) (5 U.S.C. 553(d)) that generally prescribe a 30 day prior notice of the effective date of a rule have not been followed in connection with the adoption of this rule because the Board is granting an exemption and reducing regulatory burden. The APA grants a specific exemption from the deferred effective date requirements in these instances (5 U.S.C. 553(d)(1)).

List of Subjects in 12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending Title 12 of the Code of Federal Regulations, part 250, as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 is revised to read as follows:

Authority: 12 U.S.C. 248(i) and 371c(e).

2. Section 250.241 is added to read as follows:

§250.241 Exclusion from section 23A of the Federal Reserve Act for certain transactions subject to review under the Bank Merger Act.

(a) *Grant of Exemption.* Section 23A of the Federal Reserve Act shall not apply to a transaction between affiliated insured depository institutions if the transaction has been approved by the appropriate federal banking agency 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, September 4, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-21879 Filed 9-10-92; 8:45 am]

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