FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. **10620**
January 15, 1993]

REGULATIONS H, K, AND Y

— Proposed Amendments to Regulation H, K, and Y Establishing a Uniform Multi-Agency Criminal Referral Form
Comments Due February 8

— Proposed Amendment to Regulation K Governing Activities of State-Licensed Branches and Agencies of Foreign Banks
Comments Due March 5

— Amendment to Regulation Y Implementing Certain Provisions of the Federal Deposit Insurance Corporation Improvement Act on Applications by Bank Holding Companies
Effective February 4

To All State Member Banks, Bank Holding Companies, Branches and Agencies of Foreign Banks, and Edge and Agreement Corporations in the Second Federal Reserve District, and Others Concerned:

The following statements have been issued by the Board of Governors of the Federal Reserve System concerning the following matters:

Uniform Criminal Referral Form (Regs. H, K and Y)

The Federal Reserve Board has issued for public comment proposed amendments to its Regulations H, K and Y to implement a uniform multi-agency criminal referral form.

The form is designed to facilitate compliance with financial institutions' criminal activity reporting requirements, to enhance law enforcement agencies' ability to investigate and prosecute the matters reported in the criminal referrals, and to develop and maintain a new interagency database.

Comment should be received by February 8, 1993.

The uniform criminal referral form was developed in consultation with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration, and law enforcement agencies, including the Federal Bureau of Investigation.

This form would establish uniform reporting requirements for all domestic and foreign financial institutions operating in the United States.

Activities of State-Licensed Branches and Agencies (Reg. K)

The Federal Reserve Board has issued for public comment a proposed amendment to its Regulation K (International Banking Operations) to implement Section 202(a) of the Foreign Bank Supervision Enhancement Act of 1991.

Section 202(a) provides in part that, after December 19, 1992, a state-licenced branch or agency of a foreign bank may not engage in any type of activity that is not permissible for a federal branch, unless:

1) the Board has determined that such activity is consistent with sound banking practice, and
2) in the case of a state-licensed insured branch, the Federal Deposit Insurance Corporation (FDIC) has determined that the activity would pose no significant risk to the deposit insurance fund.

The proposed amendment would set forth the application procedures that state licensed branches and agencies would be required to follow to request the Board's permission to engage in or continue to engage in an activity that is not permissible for a federal branch, and the requirements for divestiture and cessation plans.

Comments should be received by March 5, 1993.

Applications by Bank Holding Companies (Reg. Y)

The Federal Reserve Board has issued a final rule to carry out provisions of Section 202(d) and 210 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) that affect bank holding companies and foreign banking organizations with operations in the United States.

The final rule which is effective February 4, 1993, replaces an interim rule adopted in April 1992, and amends Regulation Y to specify additional factors that the Federal Reserve must consider in acting on applications submitted under the Bank Holding Company Act to acquire a bank.

Printed on the following pages is the text of the aforementioned proposals, which have been reprinted from the *Federal Registers* of January 6 and 8, respectively. Comments on the adoption of the criminal referral form should be submitted by February 8, 1993, and may be sent to the Board of Governors, as specified in the notice, or to our Supervision Support Department. Comments on the proposal dealing with the conditions under which State-licensed branches and agencies of foreign banks may engage in certain activities should be submitted by March 5, 1993, and may also be sent to the Board of Governors or to our Foreign Banking Application Division.

Enclosed — for bank holding companies and others who maintain sets of the Board's regulations — is the text of the amendment to Regulation Y, which has been reprinted from the *Federal Register* of January 6. The amendment, which is effective February 4, 1993, specifies additional factors that must be considered by the Federal Reserve System in acting on applications by bank holding companies to acquire banks under the Bank Holding Company Act. Questions regarding Regulation Y may be directed to our Domestic Banking Applications Division. (Tel. No. 212-720-5861).

E. Gerald Corrigan,
President.

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211, and 225

[Regulations H, K and Y; Docket No. R–0792]

Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Bank Control; Criminal Referral Report

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: An interagency task force has designed a uniform multiagency criminal referral form in order to facilitate compliance with financial institutions' criminal activity reporting requirements, to enhance law enforcement agencies' ability to investigate and prosecute the matters reported in the criminal referrals, and to develop and maintain a new interagency database. This uniform criminal referral form will replace the various criminal referral forms that are currently being used by federal bank, thrift and credit union regulatory agencies and by financial institutions. The purpose of the proposed regulation is to create a uniform criminal referral reporting requirement for all domestic and foreign financial institutions operating in the United States.

DATES: Comments on this proposed regulation must be received by February 8, 1993.

ADDRESSES: Comments should be sent to: Board of Governors of the Federal Reserve System, Mr. William Wiles, Secretary of the Board, 20th and C Streets, NW., Washington, DC 20551, attention Docket No. R–0792.

FOR FURTHER INFORMATION CONTACT: Herbert A. Biern, Deputy Associate Director, (202) 452–2620, Richard A. Small, Special Counsel, (202) 452–5235, or Mark Leemon, Senior Attorney, (202) 452–5206, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. 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:

Background

The federal financial institutions regulatory agencies are the Office of the Comptroller of the Currency (the "OCC"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), the Office of Thrift Supervision (the "OTS"), and the National Credit Union Administration (the "NCUA"). These agencies are charged with safeguarding the safety and soundness of financial institutions with operations in the United States, including national banks, credit unions, savings associations, state-chartered banks, bank and thrift holding companies and their nonbank subsidiaries, Edge and Agreement corporations, and all U.S. offices of foreign banks. Pursuant to their respective enabling statutes, these agencies are responsible for ensuring that financial institutions apprise federal law enforcement authorities of any violation or suspected violation of a criminal statute. Fraud, abusive insider transactions, check kiting schemes, money laundering and other crimes can cause significant financial losses, pose serious threats to a financial institution's continued viability and, if unchecked, may undermine the public confidence in the financial services industry. The law enforcement community needs to receive timely information regarding criminal and suspected criminal activity that is sufficiently detailed to determine whether investigations and prosecutions are warranted.

The Interagency Bank Fraud Working Group (the "Working Group") was formed in 1984 to promote interagency cooperation toward the goal of improving the federal government's response to white collar crime in financial institutions. The Working Group now consists of representatives from twelve federal agencies, including the Board, the other federal financial institutions regulators, the Federal Bureau of Investigation, the U.S. Secret Service, the Department of Justice and the U.S. Department of the Treasury. A subcommittee of the Working Group studied the criminal referral process and developed a new uniform criminal referral form (the "Form"). The purpose of the Form is to standardize criminal referral data and to facilitate its automation. It is anticipated that the resulting interagency criminal referral database will provide information, *inter alia*, to the OCC, the Board, the FDIC, the OTS, the NCUA, the Department of Justice and the U.S. Department of the Treasury. In order to promote use of the Form, each of the federal financial institutions regulatory agencies has decided to adopt similar regulations relating to the filing of criminal referral reports in specific situations and the use of the same Form in the making of such criminal referral reports. The new regulations would replace requirements mandating the filing of criminal referrals and designating separate agency forms for such referrals.

Comments are sought on all the provisions contained in the proposed regulation.

Regulatory Flexibility Act

The Board certifies that this proposed regulation will not have a significant financial impact on a substantial number of small banks or other small entities.

Executive Order 12291

The Board has determined that this proposed regulation is not a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980, the criminal referral report regulation was approved under authority delegated to the Board by the Office of Management and Budget. The Board has determined that the regulation does not significantly increase the burden of the reporting institutions. The estimated average burden associated with the collections of information contained in a criminal referral report is approximately .5 hour per respondent. The burden per respondent will vary depending on the nature of the criminal activity being reported.

Comments concerning the accuracy of this burden estimate should be directed to the Herbert A. Biern, Deputy Associate Director, Division of Banking Supervision and Regulation, Mail Stop 175, Federal Reserve Board, 20th and Constitution Avenue, NW., Washington, DC 20551.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping

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requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banks, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 225

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

For the reasons set forth in the preamble, parts 208, 211, and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as follows:

PARTS 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR part 208 continues to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611); sections 4, 13(j) and 38 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814, 1823(j), and 1831o).

2. Section 208.20 is added to read as follows:

§ 208.20 Reports of crimes and suspected crimes.

(a) *Purpose.* This section applies to known or suspected crimes involving state member banks. This section ensures that law enforcement agencies are notified by means of criminal referral reports when unexplained losses or known or suspected criminal acts are discovered. Based on these reports, the federal government will take appropriate measures and will maintain an interagency database that is derived from these reports.

(b) *Institution-affiliated party. Institution-affiliated party* means any institution-affiliated party as that term is defined in Sections 3(u) and 8(b)(3) and (4) of the FDIA (12 U.S.C. 1813(u) and 1818(b)(3) and (4)).

(c) *Reports required.* A state member bank shall file a criminal referral report using a standardized form (the "Form"),[1] in accordance with instructions for the Form, in every situation where:

(1) The state member bank suspects one of its directors, officers, employees, agents, or other institution-affiliated parties of having committed or aided in the commission of a crime;

(2) There is an actual or potential loss to the state member bank (before reimbursement or recovery) of more than $1,000 where the state member bank has a substantial basis for identifying a possible suspect or group of suspects and the suspect(s) is not an director, officer, employee, agent, or institution-affiliated party of the state member bank;

(3) There is an actual or potential loss to the state member bank (before reimbursement or recovery) of $5,000 or more and where the state member bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) The state member bank suspects that a monetary transaction uses the financial institution as a conduit for criminal activity, such as money laundering or structuring transactions to evade the Bank Secrecy Act reporting requirements.

(d) *Time for reporting.* (1) A state member bank shall file the report required by paragraph (c) of this section no later than 30 calendar days after the date of detection of the loss or the known or suspected criminal violation or activity. If no suspect has been identified within 30 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity, reporting may be delayed an additional 30 calendar days or until a suspect has been identified; but in no case shall reporting of known or suspected crimes be delayed more than 60 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity. When a report requirement is triggered by the identification of a suspect or group of suspects, the reporting period commences with the identification of each suspect or group of suspects.

(2) When a state member bank detects a pattern of crimes committed by an identifiable individual, the state member bank shall file a report no later than 30 calendar days after the aggregated amount of the crimes exceeds $1,000.

(3) In situations involving violations requiring immediate attention or where a reportable violation is ongoing, the state member bank shall immediately notify by telephone the appropriate law enforcement agency and the appropriate Federal Reserve Bank in addition to filing a timely written report.

(e) *Reporting to State and local authorities.* State member banks are encouraged to file copies of the Form with State and local authorities where appropriate.

(f) *Exceptions.* A state member bank need not file the Form:

(1) For those robberies and burglaries that are reported to local law enforcement authorities; and

(2) For lost, missing, counterfeit or stolen securities if a report is filed pursuant to the reporting requirements of 17 CFR 240.17f–1.

(g) *Retention of records.* A state member bank shall maintain copies of any Form that it filed and the originals of all related documents for a period of 10 years from the date of the report.

(h) *Notification to Board of Directors.* The management of a state member bank shall promptly notify its board of directors of any report filed pursuant to this section.

(i) *Penalty.* Failure to file a report in accordance with the instructions on the Form and this regulation may subject the state member bank, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for 12 CFR part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*); the International Lending Supervision Act (12 U.S.C. 3901 *et seq.*); and the Export Trading Company Act Amendments of 1988 (title III, Pub. L. 100–418, 102 Stat. 1384 (1988).

2. Section 211.8 is added to read as follows:

§ 211.8 Reports of crimes and suspected crimes.

An Edge corporation or any subsidiary or an Agreement corporation or any subsidiary shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

3. Section 211.24 is amended by adding a new paragraph (i) to read as follows:

211.24 Nonbanking activities of foreign banking organizations.

(i) *Reports of crimes and suspected crimes.* A branch or agency or

[1] Copies of the Form are available from the Federal Reserve Banks.

representative office of foreign bank operating in the United States shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: Section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)); section 8 and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3106 and 3108); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(13)); section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)); and the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX).

2. Section 225.4 is amended by adding a new paragraph (g) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(g) *Criminal referral report.* A bank holding company or any nonbank subsidiary thereof, or a foreign bank that is subject to the BHC Act or any nonbank subsidiary of such foreign bank operating in the United States, shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

Board of Governors of the Federal Reserve System, December 28, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–454 Filed 1–7–93; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R-0793]

International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing an amendment to part 211 of its regulations concerning the permissible activities of state-licensed branches and agencies of foreign banks. Section 202(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 provides that after December 19, 1992, a state-licensed branch or agency of a foreign bank may not engage in any activity that is not permissible for a federal branch of a foreign bank unless the Board has determined that the activity is consistent with sound banking practice, and in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC) has determined that the activity would pose no significant risk to the deposit insurance fund. This proposed amendment to Regulation K sets forth the application procedures that state-licensed branches and agencies of foreign banks will be required to follow in order to request the Board's permission to engage in or continue to engage in an activity that is not permissible for a federal branch of a foreign bank and the requirements of divestiture and cessation plans. Insured branches are also required to seek the approval of the FDIC to engage in or to continue to engage in such an activity.

DATES: Comments must be received by March 5, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0793, 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 to Mr. Wiles may be delivered to the Board's mailroom between the 8:45 am and 5:15 pm, and to the security control room outside of those hours. Both the mailroom 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 am and 5 pm, except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452-3786), Ann E. Misback, Senior Attorney (202/452-3788), Margaret E. Miniter, Attorney (202/452-3900), John W. Rogers, Attorney (202/452-2798), Legal Division; Michael G. Martinson, Assistant Director (202/452-3640), 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 Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 202 of the Act amended section 7 of the IBA by adding several new subsections concerning the establishment and termination of foreign bank branches in the United States. New subsection 7(h) of the IBA provides that after December 19, 1992, a state branch or state agency may not engage in any type of activity that is not permissible for a federal branch unless the Federal Reserve Board has determined that such activity is consistent with sound banking practice; and, in the case of an insured branch, the FDIC has determined that the activity would pose no significant risk to the deposit insurance fund. 12 U.S.C. 3105(h)(1).

In order to implement this provision, the Board is proposing to amend Regulation K (12 CFR part 211) concerning international banking operations by adding a new section to Subpart B entitled "Applications by State-Licensed Branches and Agencies to Conduct Activities Not Permissible for Federal Branches." This proposed new section provides that a foreign bank operating a state-licensed branch or agency in the United States, which desires to engage in or continue to engage in an activity that is not permissible for a federal branch, pursuant to statute, regulation or order or interpretation issued by the Comptroller of the Currency (OCC), shall file an application for permission to conduct or to continue conducting such activity with the Board.

Contents of Application

Section 211.29(b) of the proposed regulation provides that the application shall be in letter form and shall contain certain information, including among other things, a description of the activity in which the branch or agency desires to engage or in which it is already engaged, the foreign bank's financial condition, the assets and liabilities of the branch or agency, the projected effect of the proposed activity on the financial condition of the foreign bank and the branch or agency, and in the case of an application by a state-licensed insured branch, a statement of why the proposed activity will pose no significant risk to the deposit insurance fund.

In view of the fact that section 202(h) of the Act became effective on December 19, 1992, a foreign bank with a state branch or agency that currently is conducting an activity that is determined to be impermissible for a federal branch will not be able to obtain the Board's permission to continue the activity prior to that effective date. In such cases, the Board may permit any such branch or agency to continue to conduct the activity in question (at existing levels) until such time as the Board acts on its application. The Board expects any foreign bank engaged in an impermissible activity in a state-licensed branch or agency to file the required application promptly.

The Board and the FDIC have consulted concerning the type of information that each agency will need in order to make an informed judgment, and have agreed on a common list of information in order that applicants will need to prepare only one application which, in the case of insured branches, may be submitted to both agencies. It is contemplated that the Board and the FDIC will review such applications simultaneously. Moreover, the Board and the FDIC have attempted to balance their need for information on which to base their decisions with the cost to the applicant of gathering, organizing and submitting an application.

The Board is particularly interested in receiving comments concerning the amount and type of information requested pursuant to § 211.29(b) of the proposed regulation. Comment is also requested on whether there are certain classes of activities that, even though not permitted for federal branches, nonetheless are consistent with sound banking practices, and whether a more limited prior written notice rather than a letter application could be utilized in connection with these types of activities. With respect to the activities described in the preceding sentence, commenters are requested to describe the activity in detail and to explain why

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its conduct by a state-licensed branch or agency would be consistent with sound banking practice.

In addition, the Board requests comment concerning whether the conduct by a state-licensed branch or agency of activities permitted by the OCC pursuant to informal interpretation, opinion or advice rather than by formal interpretation or opinion should require the filing of an application. In this regard, the Board will initiate consultations with the OCC on any questions of whether a particular activity is or is not permissible for a federal branch. The Board also seeks comment on potential coordination between applications to the Board and the FDIC as a way to make this process as efficient as possible.

Finally, the Board requests comment on whether an application should be required when a foreign bank wishes to convert a federally-licensed branch or agency to a state-licensed branch or agency. When the Board approved the final amendments to Regulation K concerning establishment of branches and agencies, the Board decided that an application would *not* be required when a foreign bank wished to convert from a state license to a federal license, because it would be converting from a less restrictive to a more restrictive regime. In light of the statutory provision limiting state office powers to those of a federal branch unless the Board and, in the case of an insured branch, the FDIC approve the activities, the Board is requesting comment on whether it is necessary to require an application when a foreign bank seeks to convert from a federal to a state license.

Standards to be Examined

Section 211.29(c) sets forth the standards that the Board will examine in order to determine whether a particular practice in consistent with sound banking practice. These factors are:

(1) What types of risks, if any, the activity poses to the foreign banking organization;

(2) If the activity poses any such risks, the magnitude of each risk; and

(3) If a risk is not *de minimis*, the actual or proposed procedures to control and minimize such risk.

Each of these factors shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the proposed activity. The Board may also determine that a particular activity, after consideration of the above factors and subject to any conditions or limits imposed by the Board, may be conducted by any state-licensed branch or agency without further application to the Board.

Divestiture or Cessation

In the event that a state branch or agency is required to cease conducting an activity pursuant to the proposed regulation, § 211.29(e) of the proposed regulation sets forth the guidelines that must be followed to divest or cease the impermissible activity. Generally, this section provides that the state branch or agency shall submit a written plan of divestiture or cessation within 60 days of

(1) Being notified by the Board or the FDIC that an application to continue to conduct the activity has been denied;

(2) The effective date of the regulation in the event that the foreign bank elects not to apply for permission to continue to conduct the activity; and

(3) Any change in statute, regulation, order or OCC interpretation that renders the activity impermissible.

Divestiture or cessation shall be completed within one year, or sooner if the Board so directs. The Board requests comment on whether this period of time should be longer or shorter.

Application Not Required in Certain Instances.

The Board has determined that an application under this section normally shall not be required where an activity is permissible to a federal branch, but the OCC imposes a quantitative restriction on the conduct of such activity by the federal branch. As described in further detail above, the Board is requesting comment on whether there are any other classes of activities for which more limited prior notice would suffice.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons outlined above, the Board is proposing to amend 12 CFR part 211 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978, (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); the International Lending Supervision Act (Title IX, Pub. L. 96181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*); and the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat 1384 (1988)).

2. Part 211 is amended by revising § 211.29 to subpart B to read as follows:

§ 211.29 Applications by state-licensed branches and agencies to conduct activities not permissible for federal branches.

(a) *Scope.* Any state-licensed branch or agency that desires to engage in or continue to engage, after December 19, 1992, in any type of activity that is not permissible for a federal branch, pursuant to statute, regulation or order or interpretation issued by the Comptroller, shall file a prior written application for permission to conduct such activity with the Board pursuant to this section.

(b) *Content of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar value;

(2) A discussion by management of its analysis regarding the impact of the proposed activity on the applicant's earnings, capital adequacy, and general condition, and on the balance sheet, earnings and condition of the branch or agency, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A current statement of the applicant's assets, liabilities, and capital;

(4) A current statement of the assets and liabilities of the branch or agency;

(5) A copy of applicant's most recent audited financial statements;

(6) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management, authorizing the conduct of such activity and the filing of this application;

(7) In the case of an insured branch, a statement by the applicant of whether or not it is in compliance with §§ 346.19 and 346.20, Pledge of Assets and Asset Maintenance, respectively, of 12 CFR part 346;

(8) In the case of an insured branch, a statement by the applicant that it has complied with all requirements of the Federal Deposit Insurance Corporation concerning applications to conduct the activity in question and the status of such application, including a copy of the FDIC's disposition of such application, if applicable;

(9) In the case of an insured branch, a statement of why the activity will pose no significant risk to the deposit insurance fund; and

(10) Any other information that the Reserve Bank deems appropriate.

(c) *Factors to be considered in determination.*

(1) The Board may consider the following factors in order to determine whether a proposed activity is consistent with sound banking practice:

(i) The types of risks, if any, the activity poses to the foreign banking organization;

(ii) If the activity poses any such risks, the magnitude of each risk; and

(iii) If a risk is not de minimis, the actual or proposed procedures to control and minimize such risk.

(2) Each of the factors set forth in paragraph (c)(1) of this section, shall be evaluated in light of the financial condition of the foreign bank in general and the branch or agency in particular and the volume of the activity.

(d) *Application procedures.* Applications pursuant to this section shall be filed with the responsible Reserve Bank for the foreign bank. An application shall not be deemed complete until it contains all the information requested by the Reserve Bank and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific conditions or limitations.

(e) *Divestiture or Cessation.*

(1) In the event that an applicant's application for permission to continue to conduct an activity is not approved by the Board or the FDIC, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the responsible Reserve Bank within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity in question and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessation shall be complete within one year from the date of the disapproval, or within such shorter period of time as the Board shall direct.

(2) In the event that a foreign bank operating a state branch or agency chooses not to apply to the Board for permission to continue to conduct an activity that is not permissible for a federal branch or which is rendered impermissible due to a subsequent change in statute, regulation, order or interpretation, the foreign bank shall submit a written plan of divestiture or cessation, in conformance with § 211.29(d)(1) of this part, within 60 days of the effective date of this rule or of such change in statute, regulation, order or interpretation, respectively.

By order of the Board of Governors of the Federal Reserve System, December 30, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-163 Filed 1-5-93; 8:45 am]

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Board of Governors of the Federal Reserve System

BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

AMENDMENT TO REGULATION Y

(Effective February 4, 1993)

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0755]

Review Criteria for Bank Holding Company Applications

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation Y to implement certain regulatory improvements contained in sections 202(d) and 210 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Th final rule specifies additional factors that the Federal Reserve System must consider in acting on applications by bank holding companies to acquire banks under section 3 of the Bank Holding Company Act. The intended effect of the amendment is to conform the Board's regulations to the statutory changes.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202–452–3583), or Brian E.J. Lam, Attorney (202–452–2067), Legal Division; or Sidney M. Sussan, Assistant Director (202–452–2638), 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 Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board is adopting a final rule that revises its Regulation Y to include new supervisory factors that FDICIA requires the Board to consider in reviewing and acting on applications by bank holding companies to acquire banks under section 3 of the Bank Holding Company Act (BHC Act). These changes are required by sections 202(d) and 210 of FDICIA, Public Law 102–242, 105 Stat. 2237, 2290, 2298. On April 15, 1992, the Board adopted an interim rule that implemented sections 202(d) and 210 of FDICIA, and requested public comment on the revision to Regulation Y. 57 FR 13002, April 15, 1992. The public comment period expired on June 15, 1992

Section 202(d) of FDICIA provides that the Board must disapprove an application under section 3 of the BHC Act if;

(1) The bank holding company fails to provide the Board with adequate assurances that it will make available to the Board such information on its operations or activities, and the operations or activities of any affiliates, as the Board deems appropriate to determine and enforce compliance with BHC Act; or

(2) In the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country. Public Law 102–242, 105 Stat. 2237, 2290. Section 210 of FDICIA also provides that the Board's consideration of the managerial resources of a bank holding company or bank shall include consideration of the competence, experience and integrity of the officers, directors and principal shareholders of the bank holding company or bank. Public Law 102–242, 105 Stat. 2237, 2298.

The Board is adopting a final rule substantially as proposed. The final rule adopts the statutory language contained in sections 202(d) and 210 of FDICIA, specifying that, in deciding applications under section 3 of the BHC Act, the Board will consider the competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, and of the banks and bank holding companies concerned, their record of compliance with applicable laws and regulations, and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.[1] In addition, the final rule adopts a definition of "principal shareholder."[2]

[1] The Board's regulations currently provide that, in considering applications under section 3 of the BHC Act, the Board will consider the records of the applicant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank or banks to be acquired, of complying with applicable laws and regulations, and their record of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications. *See* 12 CFR 225.13(b)(2). These provisions will remain unchanged in the final rule.

[2] Regulation Y currently includes a definition of "principal shareholder" that is used in determining the Board's presumption of control of a financial institution or banking organization, and in the Board's Capital Adequacy Guidelines. In order to avoid confusion and to maintain consistency between the statutory language of FDICIA and the implementing provisions of Regulation Y, the Board has redesignated the current term "principal shareholder" as "controlling shareholder", and has added a new definition of the term "principal

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The Board will also consider whether the applicant has provided the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder. Moreover, in the case of an application involving a foreign banking organization, the Board will consider whether the organization is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the organization's home country.

The final rule is being adopted in conjunction with the Board's implementation of the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA), subtitle A of title II of FDICIA, which changed the authority of the Board under the International Banking Act of 1978. FBSEA provided the Board with new authority to approve the establishment of U.S. offices by a foreign bank, and to regulate and supervise the operations of a foreign bank with U.S. offices.

The Board anticipates that the final rule will not impose any significant additional burdens on domestic banking organizations or financial institutions because the Board currently seeks, and has generally been able to obtain, from domestic applicants all of the information needed to consider section 3 applications. The Board is not proposing to seek any additional types or quantities of information from domestic applicants by virtue of the final rule. The final rule ensures that the Board is able to obtain from all applicants, especially foreign applicants operating in jurisdictions that limit or prohibit the disclosure of financial information outside of the jurisdiction, the same type of information that the Board now seeks and typically obtains from domestic applicants.

Comments

In response to its request, the Board received four comments. Two commenters, a Federal Reserve Bank and a banking organization, favor the adoption of the interim rule as a final rule. Another commenter, a foreign bank, supports the goal of strengthening the applications process under the BHC Act, and agrees that the competence, experience and integrity of the officers and directors of banks and bank holding companies should be considered, as required by section 210 of FDICIA. This commenter, however, suggests that the Board should not consider the competence and experience of shareholders where such shareholders are passive investors that do not anticipate any significant involvement in the management of the bank or the bank holding company.

Section 210 expressly provides that the Board's consideration of the managerial resources of a bank or bank holding company include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank. Thus, the text of section 210 directs the Board to consider all three managerial factors with respect to all three groups of individuals.

However, the Board believes that the statutory language does not prevent the Board from considering the extent of the role a principal shareholder may play in the management of a bank or a bank holding company when evaluating the competence or experience of the shareholder. An underlying purpose of section 210 is to permit the Board to consider the abilities of the principal shareholders of banks and bank holding companies in appropriate situations, including situations where a principal shareholder has or could have a significant effect on the financial and managerial resources, future prospects, or safety and soundness of a bank or bank holding company. Thus, the Board could consider whether a shareholder proposes to be a passive investor in weighing the shareholder's banking experience and competence.

The final commenter, a banking association, suggests that, in reviewing applications submitted by domestic bank holding companies, the Board not require domestic applicants to provide information on their respective operations and activities, and the operations and activities of their affiliates. This commenter asserts that the text and placement of section 202(d) of FDICIA, its legislative history, and other legal and practical considerations all support exempting domestic banks and bank holding companies from this requirement.

The Board has considered these comments and concluded that domestic bank holding companies should not be exempted from the requirement that, when submitting section 3 applications, they provide the Board with adequate assurances that they will make available appropriate information to the Board. By its express terms, section 202(d) requires the Board to disapprove *any* application by *any* bank holding company under section 3 of the BHC Act if the company fails to provide adequate assurances that the company will make available to the Board such information on the operations or activities of the company or any affiliate of the company. In drafting section 202(d), Congress expressly limited the application of certain other provisions of that section to foreign banks, without imposing a similar limitation on the "availability of information" provision. Moreover, the legislative history of section 202(d) expressly indicates that this requirement is applicable to domestic bank holding companies.[3] Thus, in light of the statutory language and the legislative history of section 202(d), the Board has concluded that the availability of information provision should apply to domestic bank holding companies.

[S]ection 202(d) amends the BHC Act to permit the Board to disapprove *any application* to acquire a U.S. bank unless the Board is given adequate assurances that it will have access to information on the operations or activities of a company or companies, or any affiliates, making application to acquire a U.S. bank that the Board deems necessary to fulfill the requirements of the [International Banking Act], the BHC Act, or the [Financial Institutions Supervisory Act of 1966]. *This requirement applies to applications by both foreign banking*

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shareholder" that applies strictly to the standards the Board must review under the FDICIA amendments to the BHC Act. Thus, in the final rule, the term "controlling shareholder" means any person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company. Corresponding changes have been made in the Board's regulations regarding presumptions of control, and in the Board's Capital Adequacy Guidelines. The term "principal shareholder" has been redefined for purposes of implementing the FDICIA provisions to mean any person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power to exercise, directly or indirectly, a controlling influence over the management or policies of a bank or other company. The Board believes that the managerial qualities of all major shareholders (*i.e.*, shareholders controlling 10 percent or more of any class of voting securities) should be considered in appropriate situations. This is the level of ownership at which shareholder review is conducted under the Change in Bank Control Act, 12 U.S.C. 1817(j). As discussed in the preamble, the Board will consider the actual or anticipated role of a principal shareholder in the management of a bank in evaluating the competence, experience and integrity of that individual.

[3] For example, the Report of the House Committee on Banking, Finance and Urban Affairs states:

organizations and domestic bank holding companies.

H.R. Rep. No. 157, 102nd Cong., 1st Sess. 159 (1991) (emphasis added); *see also* Section-By-Section Analysis Of S. 543 As Reported By The Senate Banking Committee, *reprinted in* 138 Cong. Rec. 2059, 2094 (February 21, 1992) (noting that the availability of information provision "applies to applications by both foreign banking organizations and domestic bank holding companies").

The Board does not believe, however, that the final rule will impose a significant additional burden on domestic applicants because the Board currently seeks and typically is able to obtain from such applicants all of the information needed to consider section 3 applications. The Board does not expect or propose, following adoption of this final rule, to seek additional types or quantities of information from domestic applicants than the Board currently seeks from these applicants.

The commenter also suggests that the Board should require domestic banks and bank holding companies to provide information on an affiliate only if the affiliate either transacts business with the bank that goes beyond ordinary deposit or loan services, or exposes the bank to substantial risk. Based on the express language and legislative history of section 202(d), which both refer to "any affiliates" of the applicant, the Board also has concluded that applicants should provide the necessary assurances with regard to all affiliates, not just affiliates that transact business with a bank that goes beyond ordinary deposit or loan services or that exposes a bank to substantial risk.

However, under section 202(d) and the final rule, the Board retains discretion to determine on a case-by-case basis the extent that assurances are needed for affiliates under common control of individuals. The Board does not believe that, in light of the language and purpose of section 202(d) of FDICIA, it is appropriate to provide a general regulatory exemption for all or most companies affiliated through individual owners.

Finally, the commenter urges the Board not to require banks, bank holding companies and their affiliates to provide information that is deemed to be privileged or confidential under applicable federal or state laws. No such exception appears to have been contemplated by section 202(d). The Board believes that, in certain circumstances, it may be appropriate for the Board to request, and for applicants to provide, information which may be deemed privileged or confidential. The Board can and will, however, afford this information confidential treatment as provided in the Freedom of Information Act. Accordingly, the Board believes that it is not appropriate to adopt a regulatory provision limiting the Board's ability to request or obtain relevant confidential or privileged information.

For all of the foregoing reasons, the Board has concluded that the availability of information provision of the interim rule should remain unchanged in the final rule.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board hereby certifies that the final rule will not have a significant impact on a substantial number of small entities.

The final rule imposes the minimum burdens necessary to implement the provisions of sections 202(d) and 210 of FDICIA for all banks and bank holding companies subject to the regulation, regardless of size. The regulation specifies additional factors which the Board must consider in acting on applications by bank holding companies to acquire banks under section 3 of the BHC Act. The final rule does not impose any additional regular recordkeeping, reporting or other similar requirements on banks.

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, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, 12 U.S.C. 1844(b), the Board amends part 225 of Chapter II of Title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. Section 225.2 is amended by revising the text of paragraph (k) as follows:

§ 225.2 Definitions.

* * * * *

(k)(1) *Controlling shareholder* means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a bank or other company.

* * * * *

2. Section 225.13 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 225.13 Factors considered in acting on bank applications.

(a) *Prohibited anticompetitive transactions.* As specified in section 3(c) of the BHC Act, the Board may not approve any application under this subpart if:

(1) The transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in any part of the United States;

(2) The effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anticompetitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community;

(3) The applicant has failed to provide the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder; or

(4) In the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in § 211.24(c)(1)(ii) of the Board's Regulation K (12 CFR 211.24(c)(1)(ii)).

(b) * * *

(2) *Managerial Resources.* The competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, its subsidiaries, and the banks and bank holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

* * * * *

3. Section 225.31 is amended by revising paragraph (d)(2)(ii) to read as follows:

§ 225.31 Control proceedings.

(d) * * *

(2) * * *

(ii) *Shares controlled by company and associated individuals.* A company that, together with its management officials or controlling shareholders (including members of the immediate families of either as defined in 12 CFR 206.2(k)), owns, controls, or holds with power to vote 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company controls the bank or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

* * * * *

4. Appendix B is amended by revising footnote 1 to read as follows:

Appendix B to Part 225—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks: Leverage Measure

* * * * *

[1] The guidelines will apply to bank holding companies with less than $150 million in consolidated assets on a bank-only basis unless:

(1) The holding company or any nonbank subsidiary is engaged directly or indirectly in any nonbank activity involving significant leverage or

(2) The holding company or any nonbank subsidiary has outstanding significant debt held by the general public. Debt held by the general public is defined to mean debt held by parties other than financial institutions, officers, directors, and controlling shareholders of the banking organization or their related interests.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 29, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-32 Filed 1-5-93; 8:45 am]

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AT-10620

February 11, 1993

To the Addressee:

On January 15, 1993, our Circular No. 10620 was issued transmitting, among other regulatory changes, an amendment to Regulation Y, implementing certain provisions of the Federal Deposit Insurance Corporation Improvement Act regarding applications by bank holding companies.

Part of the amendment involved changes in the definitions section of the regulation (section 225.2). However, the amended definitions were incorrectly printed as part of subparagraph k of that section; they are actually part of subparagraph 1.

Printed on the reverse side is an excerpt from the *Federal Register* of January 13, 1993, correcting the amendment.

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

(OVER)

Board of Governors of the Federal Reserve System

BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

CORRECTION OF AMENDMENT TO REGULATION Y

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0755]

Review Criteria for Bank Holding Company Applications

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is correcting a codification error in a document published in 58 FR 471, January 6, 1993. That document amended Regulation Y to implement certain regulatory improvements contained in sections 202(d) and 210 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202-452-3583), or Brian E.J. Lam, Attorney (202-452-2067), 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: The final rule published in the Federal Register on January 6, 1993, revised § 225.2(k) (defining the term "person") rather than revising § 225.2(l) (defining the term "principal shareholder") of the Board's Regulation Y (12 CFR 225.2(k) and (l)). This final rule restores the pre-existing definition of the term "person" in § 225.2(k), and properly revises § 225.2(l) to define the terms "controlling shareholder" and "principal shareholder" as intended by the final rule published on January 6, 1993.

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, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, 12 U.S.C. 1844(b), the Board amends part 225 of Chapter II of Title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818(b), 1828(o), 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, 3331-3351.

2. Section 225.2 is amended by revising paragraphs (k) and (l) to read as follows:

§ 225.2 Definitions.

* * * * *

(k) *Person* includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(l)(1) *Controlling shareholder* means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a bank or other company.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 7, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-771 Filed 1-12-93; 8:45 am]

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