

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10701**  
March 25, 1994 ]

**BANK HOLDING COMPANIES**

**Proposed Amendments to Regulation Y to Permit  
Exceptions to Product Tie-in Prohibitions**

*Comments Invited by April 14*

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

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has requested public comment on proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding discounts on certain products and services for customers obtaining traditional banking products from affiliates.

Comments should be received by April 14, 1994.

The proposed rule would permit bank holding companies to provide discounts on commissions charged for brokerage services if the customer also obtains a traditional bank product such as a loan, deposit, or trust service from any affiliate.

The Board recently approved an exemption permitting discounts on brokerage commissions for First Union Corporation, Charlotte, North Carolina, and the proposed rule would make it available to bank holding companies generally, thus avoiding the need for action on individual requests.

The proposed rule would also permit discounts on any traditional bank product if the customer obtains another traditional bank product from an affiliate of the bank.

Printed on the following pages is the text of the proposal, as published in the *Federal Register* of March 16. Comments thereon should be submitted by April 14, 1994 and may be sent to the Board, as indicated in the notice, or to our Banking Applications Department.

WILLIAM J. McDONOUGH,  
*President.*

Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

**FOR FURTHER INFORMATION CONTACT:** Robert deV. Frierson, Managing Senior Counsel (202/452-3711); Laurie S. Schaffer, Senior Attorney (202/452-2246), or David S. Simon, Attorney (202/452-3611), Legal Division; or Anthony Cyrnak, Economist, (202/452-2917), Division of Research and Statistics, Board of Governors. 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 & C Street, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 et seq.) (Section 106) generally prohibits banks from tying a product or service to another offered by the bank or any of its affiliates. A prohibited tie-in occurs if a bank: (1) varies the consideration for credit or other service on the condition that the customer obtain some additional service from the bank or any of its affiliates; or (2) actually requires the customer to purchase another product or service from the bank or any of its affiliates as a condition for providing the customer the first product or service. In 1971, the Board applied these antitying prohibitions to bank holding companies and their nonbank subsidiaries as if they were banks.

The statute provides an exemption permitting a bank to tie a product with a traditional bank product<sup>1</sup> offered from that bank, but not from any of its affiliates. Thus, Section 106 permits a bank to discount the consideration paid for credit if a customer also obtains a traditional banking product from that bank (but not an affiliate of that bank).

Section 106 provides that the Board may, by regulation or order, permit exceptions from the antitying prohibition where the Board determines that an exception will not be contrary to the purposes of the section.

<sup>1</sup> These products are defined for purposes of tie-in prohibitions as "a loan, discount, deposit, or trust service." 12 U.S.C. 1972(1)(A).

**Analysis of Proposed Amendments**

*Discounts on Brokerage Services.* The Board recently approved an exemption for a brokerage subsidiary of a First Union bank to offer discounts on commissions for brokerage services to customers who maintain a minimum balance in accounts at any First Union bank.<sup>2</sup> The Board found that the market for retail brokerage services is national in scope and highly competitive therefore making it unlikely that First Union—or any other provider of brokerage services—could exercise sufficient market power to impair competition in the market for traditional banking services. The Board also noted that, under antitrust precedent, concerns over these types of arrangements were substantially reduced where the buyer is free to take either product by itself even though the seller also may offer the two items as a unit at a single price.<sup>3</sup> Under these circumstances, the Board concluded that the requested exemption was consistent with the legislative purpose of the statute (to prevent banks from using their economic power to lessen competition or engage in anticompetitive practices) and the legislative purpose of the Board's exemptive authority (to allow appropriate traditional banking practices based on sound economic analysis).

The Board believes that this exemption should be available to all bank holding companies, and the proposed rule implements this exemption by permitting a bank to offer a discount on brokerage services if the customer obtains a traditional banking product from that bank or any affiliate. The brokerage services and traditional banking products offered in the arrangement, however, could be separately purchased by the customer.

*Traditional Bank Products.* As noted, Section 106 contains an exemption that permits a bank to tie a product to a traditional bank product so long as both products are offered by the bank itself. The statute does not permit a bank to tie its products to a traditional bank product offered by an affiliate bank or nonbank, however. The Board has received several requests for exemptions involving proposed discounts on individual traditional bank products offered by a bank and its affiliates.<sup>4</sup> The

<sup>2</sup> *First Union Corporation*, 80 Federal Reserve Bulletin 166 (1994) ("First Union Order").

<sup>3</sup> *Northern Pacific R. Co. v. United States*, 356 U.S. 1, 6, n.4 (1958).

<sup>4</sup> A request by First Union, which would permit any First Union bank to vary the consideration on traditional bank products to customers who

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 225**

[Regulation Y; Docket No. R-0832]

**Revisions Regarding Tie-in Prohibitions**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board is seeking public comment on proposed amendments to Regulation Y that would permit bank holding companies to offer discounts on brokerage commissions if the customer obtains a traditional bank product (a loan, discount, deposit, or trust service) from any affiliate. The Board recently approved an exemption permitting discounts on brokerage commissions for First Union Corporation, Charlotte, North Carolina (First Union), and the proposed rule would make it available to bank holding companies generally, thus avoiding the need for action on individual requests.

The proposal also seeks comment on whether the Board should adopt an exception to the antitying prohibitions to permit a bank to discount a traditional bank product if the customer obtains another traditional bank product from an affiliate of the bank. This exemption extends to affiliates the statutory exemption that permits a bank to offer discounts on packages of traditional bank products. The Board has received several requests for exemptions involving individual traditional bank products and believes that such an exemption is more appropriately addressed in rulemaking.

**DATES:** Comments must be submitted on or before April 14, 1994.

**ADDRESSES:** Comments, which should refer to Docket No. R-0832, may be mailed to the Board of Governors of the Federal Reserve System, 20th and

proposal seeks comment on adopting an exception to the antitying restrictions of Section 106 to permit a bank to offer a discount on a traditional bank product it offers if the customer obtains another traditional bank product from an affiliate of the bank, provided that all the products are available for separate purchase by the customer.

The Board believes that such an exemption is consistent with the purposes of the statute, and the Congressional intent not to affect traditional banking relationships. In this regard, the Senate Report states that the traditional bank products exemption was intended to preserve a customer's ability to negotiate the price of multiple banking services with the bank on the basis of the customer's entire relationship.<sup>5</sup> The Senate Report also suggests that the Board could use its exemptive authority to continue to allow appropriate traditional banking practices.<sup>6</sup>

Banks organized in a bank holding company structure currently are subject to regulatory burdens not imposed on single banks offering discounts on traditional bank products. Moreover, it does not appear to further the purpose of the statute to allow a bank to discount a product it offers if the customer has purchased a traditional bank product from the bank, but not to allow the discount when the customer has purchased the very same traditional bank product from an affiliate bank or nonbank. By removing this regulatory burden, the Board believes that consumers would benefit from costs savings realized through more efficient operations.

The same efficiencies and costs savings to consumers would be realized by permitting discounts on traditional bank products offered by nonbank affiliates in a package arrangement with an affiliate bank. In this regard, the legislative history for provisions involving tying prohibitions enacted

maintain a minimum balance in accounts at any bank affiliate, was published and received 10 comments. All the commenters favored the proposal, and several commenters requested the Board to broaden the exemption to include all traditional bank products through rulemaking.

<sup>5</sup> S. Rep. No. 1084, 91st Cong., 2d Sess., 16-17 (1970) ("Senate Report"). The Senate Report cites the following application of the exemption: "where the customer uses multiple banking services such as deposit, loan, fiduciary, and commercial accounts or facilities, the parties may be free to fix or vary the consideration for any services upon the existence or extent of utilization of such banking services." Senate Report at 17. Senator Bennett noted when introducing the tie-in amendment that "[c]learly, neither a bank nor its customer should be attacked under [Section 106] for taking advantage of the economies and efficiencies of full-service banking." 116 Cong. Rec. S15708 (1970).

<sup>6</sup> Senate Report at 46.

after Section 106 support these types of package arrangements for traditional bank products offered in combination with nonbanking affiliates.<sup>7</sup>

**Paperwork Reduction Act**

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the proposed rule.

**Regulatory Flexibility Act**

It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

**List of Subjects in 12 CFR Part 225**

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

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 225 as set forth below:

**PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)**

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

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

2. In § 225.4, new paragraphs (d)(3) and (d)(4) are added to read as follows:

**§ 225.4 Corporate practices.**

\* \* \* \* \*  
(d)(1)  
\* \* \* \* \*

(3) *Exemption for brokerage services.*  
A bank may vary the consideration charged for brokerage services on the condition or requirement that the customer also obtain a loan, discount, deposit, or trust service (but no other products) from that bank or any affiliate, if the brokerage services and the loan, discount, deposit, or trust service offered in the arrangement also are

<sup>7</sup> In the Competitive Equality Banking Act of 1987 (Pub. L. 100-86), which applied the tie-in restrictions to nonbank banks, Congress indicated that "the anti-tying restrictions [of Section 106] would not be violated by tying one of these traditional banking services offered by a grandfathered nonbank bank to another traditional banking service offered by an affiliate." H.R. Conf. Rep. No. 261, 100th Cong., 1st Sess. 128-29 (1987). While this excerpt does not accurately reflect the literal terms of Section 106, it lends support for the proposed extension of an exemption for tie-in arrangements for traditional banking services offered by a bank and its nonbanking affiliates or parent holding company.

separately available for purchase by the customer. The exemption granted pursuant to this paragraph shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

(4) *Exemption for traditional bank products.* A bank may vary the consideration charged for a loan, discount, deposit, or trust service (but no other products) on the condition or requirement that the customer also obtain a loan, discount, deposit, or trust service (but no other products) from an affiliate of that bank, if all these products are separately available for purchase by the customer. The exemption granted pursuant to this paragraph shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

\* \* \* \* \*  
By order of the Board of Governors of the Federal Reserve System, March 10, 1994.

**Jennifer J. Johnson,**  
*Associate Secretary of the Board.*

[FR Doc. 94-6050 Filed 3-15-94; 8:45 am]

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