FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10739**
November 9, 1994]

BANK HOLDING COMPANY APPLICATIONS

Interim Rule on Simplified Procedures With Request for Comments by December 5

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

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

The Federal Reserve Board has issued interim rules implementing changes to the Board's application procedures established by the Riegle Community Development and Regulatory Improvement Act of 1994 (the "CDR Act") and requested public comment on these rules.

Comment is requested by December 5, 1994.

The CDR Act makes certain revisions to the procedures that bank holding companies must follow to gain approval of bank and nonbank acquisition proposals under the Bank Holding Company Act.

Specifically, the CDR Act:

- establishes a prior notice procedure to replace the current application process for all proposals by bank holding companies to engage in nonbanking activities;
- establishes a streamlined notice procedure for the formation of a new bank holding company as part of a reorganization by the existing shareholders of a bank;
- permits the Board, when it has obtained the consent of the Department of Justice, to shorten from 30 days to 15 days the post-approval waiting period during which the Department may file a court challenge to a bank acquisition proposal on competitive grounds; and
- eliminates the need for prior Board approval of certain "Oakar" transactions whereby a bank acquires a thrift or thrift assets.

Because these amendments became effective upon enactment of the CDR Act, the Board has adopted interim rules implementing these changes to the Board's application and notice procedures.

In addition to seeking comment on these rules, the Board also seeks comment on any other ways in which the Board's application and notice procedures may be further streamlined to reduce the regulatory burden associated with these procedures.

Printed on the following pages is the text of the interim rule, as published in the *Federal Register* of November 2. Comments thereon should be submitted by December 5, 1994, and may be sent to the Board of Governors, as indicated in the notice, or to our Banking Applications Department

WILLIAM J. MCDONOUGH,
President.

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0852]

Applications Under Regulation Y

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: These rules are intended to implement the simplified notice procedures recently established under section 346 of the Riegle Community Development and Regulatory Improvement Act of 1994 for bank holding companies proposing to engage *de novo* or through an acquisition in nonbanking activities. Because Section 346 implements this procedure immediately, the Board has proposed the following as an interim rule that will take effect immediately and will apply to all notices filed subsequent to enactment of Section 346. The Board also is seeking comments on the interim rule, and will amend the rule as needed to address the comments received. The Board is currently developing additional initiatives to reduce the regulatory burden associated with its application and notice procedures, and the Board invites comment on any suggestions in furtherance of these initiatives.

DATES: Interim rule effective on November 2, 1994, comments must be received by December 5, 1994.

ADDRESSES: Comments should refer to Docket No. R–0852 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the Board's Security Control Room inside the Eccles Building courtyard on 20th Street (between Constitution Avenue and C Street, NW) anytime. Comments may be inspected in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Terence F. Browne, Senior Attorney (202/452–3707), Legal Division; or Don E. Kline, Associate Director (202/452–3421), Nicholas A. Kalambokidis, Supervisory Financial Analyst (202/452–3830), or Larry R. Cunningham, Senior Financial Analyst (202/452–2701), Division of Banking Supervision and Regulation of the Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) (BHC Act) prohibits bank holding companies from acquiring or retaining shares of any company that is not a bank or engaging in any activity other than managing and controlling banks, except under certain circumstances. The primary exception permits bank holding companies to conduct activities and acquire companies engaged solely in activities the Board has determined to be closely related to banking and a proper incident thereto. See 12 U.S.C. 1843(c)(8).

Section 346 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103–325, section 346, 108 Stat. 2160, 2239 (1994)("Section 346")) amends section 4 of the BHC Act to establish a new notice procedure for obtaining Board approval under sections 4(a)(2) and 4(c)(8) of the BHC Act.[1] Under Section 346, a proposal requiring Board approval under section 4(a)(2) or 4(c)(8) may be consummated 60 days after providing the Board with a complete written notice of the proposal, unless the notice period is extended as provided in the statute. Section 346 also permits proposals to be consummated at anytime during this notice period if approved by the Board during this period.

The proposed interim rule would replace the current application procedure of section 4(c)(8) of the BHC Act with the new notice procedure.[2] The rule would streamline the current procedure for obtaining Board approval for nonbanking proposals in several respects. In particular, the proposed revisions would:

- Establish a simplified notice procedure for action on proposals to engage *de novo* or through an acquisition in a listed activity (i.e., an activity on the Regulation Y list of permissible nonbanking activities[3]) within 30 days of receipt of the notice by the Reserve Bank;
- Establish a notice procedure for action on proposals to engage *de novo* or through an acquisition in an un-listed activity or a new activity within 60 days of filing of a complete notice;
- Eliminate the current 28 day pre-acceptance period for notices involving nonbanking proposals;
- Reduce from 30 days to 15 days the public comment period for proposals involving listed activities; and

[1] Section 346 establishes a notice procedure for situations in which prior Board approval is required under section 4(c)(8) or 4(a)(2) of the BHC Act, and was not intended to impose any new approval requirements on transactions that may otherwise be consummated under section 4 of the BHC Act without Board approval.

[2] All applications and notices to engage in nonbanking activities that were filed with a Reserve Bank prior to September 23, 1994 will continue to be processed under the existing rules.

[3] 12 CFR 225.25.

• Specify in the regulation the core information that bank holding companies must provide for a nonbanking proposal.

These revisions to the current application procedures should result in an overall reduction in the total period of time involved in reviewing nonbanking proposals, and in a reduction in the paperwork burden associated with proposals to engage in nonbanking activities. Comment is invited on all aspects of this proposal.

Notice Procedure Under Interim Rule

To implement these statutory changes, the Board proposes to amend Regulation Y to replace the application procedures for obtaining approval to engage in nonbanking activities with a notice procedure. The interim rule contemplates action by the Reserve Bank on nonbanking proposals involving listed activities within 30 days after a notice containing all of the information required in the rule has been received by the Reserve Bank, in cases that qualify for Reserve Bank action, and within 60 days of that date in cases involving any previously approved activity that are subject to Board action. While the rule also indicates that the Board will seek to act on notices involving new activities within 60 days of receipt of the notice by the Reserve Bank, proposals that involve activities that have not been previously approved by the Board often require substantial information and may continue to require a greater processing period.

The interim rule specifies the different types of information required for proposals to engage *de novo* in listed activities, proposals to acquire a company engaged in listed activities, and proposals to engage in activities not previously approved by regulation ("unlisted activities").

Listed Activities

The proposed rule contemplates that proposals to engage *de novo* or to acquire a company engaged in a listed activity will be approved within 30 days of the original date of filing of the notice, even if additional information is subsequently requested by the Reserve Bank or the Board. Upon receipt of a notice to engage in or to acquire a company engaged in a listed activity (or an activity previously approved by order), the Reserve Bank shall immediately notify the Board, and the Board will publish notice of the proposal in the **Federal Register** inviting public comment for a period of 15 days. Within 30 calendar days after receipt by the Reserve Bank of a notice filed under the interim rule, the Reserve Bank must approve the notice, extend the notice period for 15 calendar days, or refer the notice to the Board for decision because a substantive comment on the proposal has been received or action on the notice by the Reserve Bank is not appropriate. The Reserve Bank also may, within 15 calendar days of receipt of the notice, return the notice if it is informationally incomplete. Under the interim rule, the return of a notice by a Reserve Bank under such circumstances is deemed action on the notice.

Unlisted Activities

As is the practice under the current rules, proposals to engage in activities not previously approved by the Board by regulation or order will be published by the Board in the **Federal Register** within 10 business days of acceptance by the Reserve Bank, unless the Board determines to extend this 10-day period for an additional 30 days. Public notice of proposals to engage in such new activities shall invite comment for a period of generally 30 days, or if the Board determines that the notificant has not adequately demonstrated that the proposed activity is so closely related to banking as to be a proper incident thereto, the Board may return the notice and explain the reasons for its determination.

The interim rule provides that the Board will attempt to act on all cases referred for Board action within 60 days of the date the notice is received by the Reserve Bank. As noted above, proposals that involve new activities that have not been previously approved by the Board are likely to require a greater processing period. In the event the Board does not act on the notice within 60 days of receipt by the Reserve Bank, the Board will notify the bank holding company, and explain the reasons for needing additional time as well as provide an anticipated date by which the Board expects to act on the notice.

Elimination of Pre-Acceptance Review Period

As noted above, the interim rule eliminates the pre-acceptance review procedure currently contained in Regulation Y for proposals to engage in nonbanking activities. This procedure established a defined period of up to 28 days during which an applicant and the Reserve Bank could identify and address significant issues prior to the filing of a final application. This procedure has been particularly beneficial to the processing of complex proposals and applications to engage in activities not previously approved by the Board by regulation or order, where information requests often must be tailored to the specific proposal.

While the elimination of pre-acceptance procedures should shorten the review process, the Board recognizes the utility of a pre-acceptance procedure and anticipates that there will be certain proposals that could benefit from some form of pre-acceptance review. The Board invites comments as to whether some form of pre-notice review procedure should be reinstated in the final regulations.

Public Notice

Regulation Y currently provides that (with the exception of proposals processed under the abbreviated procedure for small acquisitions) all proposals to engage in previously approved nonbanking activities must be published in the **Federal Register** and provide for a public comment period of not more than 30 days. Under the interim rule, the public comment period has been shortened from 30 days to 15 days for proposals to engage in activities previously approved by the Board by regulation or order. The interim rule also provides that the Reserve Bank may not act on a notice before the fifth business day following the close of the public comment period unless an emergency exists requiring expedited or immediate action.

Section 346 authorizes the Board to prescribe shorter notice periods by regulation for particular activities or transactions. The Board invites comment on whether further shortening of the comment period is appropriate, particularly for notices to engage in activities previously approved by the Board. In particular, the Board requests comment on a proposal to reduce the public comment period to 5 calendar days for proposals that involve listed activities and/or activities that have been previously approved by Board order. This would enable the Reserve Banks to act on proposals that raise no substantive issues well within the 30-day target.

Statutory Period

The interim rule incorporates the provisions of Section 346 that establish the permissible length of the notice period. Under the interim rule, a notice is deemed approved by operation of law 60 days after receipt of a complete notice, unless extended as provided in Section 346. As provided in the statute, the interim rule provides that a notice is deemed complete when it contains all information required in the interim rule and all other information requested by the Board or the Reserve Bank in

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connection with the notice. The Board may extend the notice period for an additional 30 days upon notice to the bank holding company. If the proposal involves an unlisted activity, the Board may extend the notice period for a 90-day period in addition to the 30-day extension, provided the Board notifies the bank holding company and explains the reasons for this additional extension. Further extensions are only permissible in the event the Board determines to conduct a hearing on the proposal, or the notificant has consented to an extension or tolling of the notice period.

The interim rule adopts the provision in Section 346 that permits the Board to request additional information about a proposal at any time during the notice period. The rule also includes the provision of Section 346 that provides that the Board may deny any notice if the notificant neglects, fails, or refuses to furnish the Board all the information required by the Board.

Abbreviated Notice Procedure for Small Acquisitions

The interim rule retains the current abbreviated notice procedure contained in Regulation Y for small acquisitions of assets or shares of companies engaged in activities previously approved by the Board by regulation.[4] Currently, this abbreviated notice procedure may be used for acquisitions where neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds the greater of (i) $15 million or (ii) 5 percent of the consolidated assets of the acquiring company up to a maximum of $100 million. The interim rule retains this abbreviated notice procedure for small acquisitions of companies engaged in laundry list activities, and increases the size limitation for acquisitions that qualify for this procedure from a maximum of $100 million to a maximum of $300 million.

The primary benefit of the abbreviated notice procedure for small acquisitions is the shortened approval process realized by opting to publish public notice of the proposal in local newspapers in the communities affected by the proposal. Since this provision of Regulation Y was adopted, notificants have increasingly opted to publish notice of the proposed acquisition in the **Federal Register** in order to conduct the nonbanking activity nationwide or throughout a geographic area so large that public notice of the proposal by means of local newspaper publication is unduly expensive or impracticable. Moreover, the streamlined notice procedure established by the interim rule would effectively shorten the notice period for all acquisitions involving listed activities.

In light of this, the Board invites comment as to whether the abbreviated notice procedure for small acquisitions should be retained, eliminated, or amended.

Simplified Notice Procedures

The Board believes that these proposals will substantially reduce the burden associated with the approval requirement under section 4 of the BHC Act without resulting in unsafe and unsound banking practices. Because the provisions of Section 346 are implemented immediately, the Board is proposing to adopt the following regulation as an interim rule in connection with nonbanking activities conducted pursuant to section 4 of the BHC Act. The Board invites comments on all aspects of this interim rule, and will amend this rule as needed to reflect the comments received. The Board also invites suggestions on other means of reducing the regulatory burden associated with the System's application and notices procedures.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities. This interim rule will reduce the regulatory burden on bank holding companies imposed by the Board's procedures, and the Board is inviting public comment on additional ways to reduce regulatory burden.

Paperwork Reduction Act Analysis

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

List of Subjects in 12 CFR Part 225

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

For the reasons set forth in the preamble, the Board amends 12 CFR part 225 as follows:

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. Sections 225.23 and 225.24 are revised to read as follows:

§ 225.23 Procedures for notices to engage in nonbanking activities.

(a) *Notice required for nonbanking activities.* A notice for the Board's prior approval under § 225.21(a) to engage in or acquire a company engaged in a nonbanking activity shall be filed by a bank holding company (including a company seeking to become a bank holding company) with the appropriate Reserve Bank in accordance with this section and the Board's Rules of Procedure (12 CFR 262.3).

(1) *Engaging de novo in listed activities.* A bank holding company seeking to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity listed in § 225.25 shall file a notice containing the following:

(i) A description of the activities to be conducted;

(ii) The identity of the company that will conduct the activity; and

(iii) If the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary.

(2) *Acquiring company engaged in listed activities.* A bank holding company seeking to acquire or control voting securities or assets of a company engaged in a nonbanking activity listed in § 225.25 shall file a notice containing the following:

(i) A description of the proposal, including a description of each proposed activity, and the effect of the proposal on competition among entities engaging in each proposed activity;

(ii) The identity of any entity involved in the proposal, and if the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary;

(iii) A statement of the public benefits that can reasonably be expected to result from the proposal; and

(iv) A description of the terms and sources of funds for the transaction; a copy of any pertinent purchase agreement(s); balance sheet and income

[4] This procedure is only available to bank holding companies that meet the Board's Capital Adequacy Guidelines and are proposing to acquire a company engaged in activities for which the bank holding company has previously received System approval.

statements for the most recent fiscal quarter and year-end for any company to be acquired; parent company only and consolidated *pro forma* balance sheets for the notificant as of the most recent fiscal quarter; and calculations of *pro forma* consolidated risk-based capital ratios and leverage ratio for the notificant as of the most recent fiscal quarter.

(3) *Engaging in or acquiring company to engage in unlisted activities.* A bank holding company seeking to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company engaged in, any activity not listed in § 225.25 shall file a notice containing the following:

(i) Evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto;

(ii) A commitment to comply with all conditions and limitations that have been established by the Board governing the proposed activity; and

(iii) The information required in paragraph (a)(2) of this section, as appropriate.

(b) *Notice provided to Board.* The Reserve Bank shall immediately send to the Board a copy of any notice received under paragraphs (a)(2) or (a)(3) of this section.

(c) *Notice to public*—(1) *Listed activities and activities approved by order.* A Reserve Bank that receives a notice involving an activity listed in § 225.25 or previously approved by the Board by order shall immediately send notice of receipt of the proposal to the Board for publication in the **Federal Register**. The **Federal Register** notice shall invite public comment on the proposal for a period of 15 days.

(2) *New activities*—(i) *In general.* In the case of a notice under this section involving an activity that is not listed in § 225.25 and that has not been previously approved by the Board by order, the Board shall send notice of the proposal to the **Federal Register** for publication, unless the Board determines that the notificant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The **Federal Register** notice shall invite public comment on the proposal for a reasonable period of time, generally for 30 days.

(ii) *Time for publication.* The Board shall send the notice required under this paragraph to the **Federal Register** within 10 business days of acceptance by the Reserve Bank. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the notificant. In the event notice of a proposal is not published for comment, the Board shall inform the notificant of the reasons for the decision.

(d) *Action on notices*—(1) *Reserve Bank action.*—(i) *In general.* Within 30 calendar days after receipt by the Reserve Bank of a notice filed pursuant to paragraphs (a)(1) or (a)(2) of this section, the Reserve Bank shall:

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because substantive adverse comment has been received or because action under delegated authority is not appropriate.

(ii) *Return of incomplete notice.* Within 15 calendar days of receipt, the Reserve Bank may return any notice as informationally incomplete that does not contain all of the information required by this subpart. The return of such a notice shall be deemed action on the notice.

(iii) *Extension of period for action.* The Reserve Bank may, within the 30-day period provided in this paragraph for action on a notice, extend such 30-day period for an additional 15 calendar days.

(iv) *Notice of action.* The Reserve Bank shall promptly notify the bank holding company of any action, referral or extension under this paragraph.

(v) *Close of public comment period.* The Reserve Bank shall not approve any notice under this paragraph prior to the fifth business day after the close of the public comment period, unless an emergency exists that requires expedited or immediate action.

(2) *Board action*—(i) *Internal schedule.* The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board will notify the notificant and explain the reasons and the date by which the Board expects to act.

(ii) *Required time limit for Board action.* The Board shall act on any notice under this section that is referred to it for decision within 60 calendar days after the submission of a complete notice.

(iii) *Extension of required period for action*—(A) *In general.* The Board may extend the 60-day period required for Board action under paragraph (d)(2)(ii) of this section for an additional 30 days upon notice to the notificant.

(B) *Unlisted activities.* If a notice involves a proposal to engage in an activity that is not listed in § 225.25, the Board may extend the period required for Board action under paragraph (d)(2)(ii) of this section for an additional 90 days. This 90-day extension is in addition to the 30-day extension period provided in paragraph (d)(2)(iii)(A) of this section. The Board shall notify the notificant that the notice period has been extended and explain the reasons for the extension.

(3) *Requests for additional information.* The Board or the Reserve Bank may at any time request any additional information that either believes is needed for a decision on any notice under this subpart.

(4) *Tolling of period.* The Board or the Reserve Bank, as the case may be, may at any time extend or toll the time period for action on a notice for any period with the consent of the notificant.

(5) *Approval through failure to act.* A notice under this subpart shall be deemed to be approved at the conclusion of the period that begins on the date the complete notice is received by the Reserve Bank or the Board and that ends 60 calendar days plus any applicable extension and tolling period thereafter.

(6) *Complete notice.* A notice shall be deemed to be complete for purposes of this subpart at such time as it contains all information required by this subpart and all other information requested by the Board or the Reserve Bank in connection with the particular notice.

(e) *Expedited procedure for small acquisitions*—(1) *Filing notice.* As an alternative to the notice procedure of paragraph (a)(2) of this section, a bank holding company may satisfy the notice requirement of this section in connection with the acquisition of voting securities or assets of a company engaged in an activity listed in § 225.25 by:

(i) Providing the appropriate Reserve Bank with a description of the transaction; and either

(ii) Submitting a copy of a newspaper notice in the form prescribed by the Board; or

(iii) Requesting the Board to publish notice of the proposal in the **Federal Register** as provided in paragraph (c)(1) of this section.

(2) *Contents of publication.* A newspaper notice under this subsection shall be published in a newspaper of general circulation in the areas to be served as a result of the acquisition and shall provide an opportunity for interested persons to comment on the notice for a period of at least 10 calendar days.

(3) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if:

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(i) Neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds the greater of:

(A) $15 million; or

(B) Five percent of the consolidated assets of the acquiring company up to a maximum of $300 million;

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

(iii) The bank holding company meets the Board's Capital Adequacy Guidelines (Appendix A of subparts A through E of this part).

(4) *Action on notice.* Within 5 business days after the close of the comment period specified in the **Federal Register** notice or within 15 calendar days after receipt by the Reserve Bank of the newspaper notice, the Reserve Bank shall either approve the proposal or refer it to the Board for decision if action under delegated authority is not appropriate. The Board shall act in accordance with paragraph (d)(2) of this section on a notice under this paragraph that is referred to it for decision. The Reserve Bank, upon written notice to the notificant, may extend the time period for approval under this paragraph for a reasonable period of time not to exceed 30 days.

(f) *Hearings*—(1) *Procedure to request hearing.* Any request for a hearing on a notice under this section shall comply with the provisions of 12 CFR 262.3(e).

(2) *Determination to hold hearing.* The Board may order a formal or informal hearing or other proceeding on a notice as provided in 12 CFR 262.3(i)(2). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(3) *Extension of period for hearing.* The Board may extend the time for action on any notice for such time as is reasonably necessary to conduct a hearing and evaluate the hearing record. Such extension shall not exceed 91 calendar days after the date of submission to the Board of the complete record on the notice. The procedures for computation of the 91-day rule as set forth in § 225.14(g) apply to notices under this subpart that involve hearings.

(g) *Notice to expand or alter nonbanking activities*—(1) *De novo expansion.* A notice under paragraph (a)(1) of this section is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activity that the Board has previously approved for the bank holding company under this regulation, only if:

(i) The Board's prior approval was limited geographically;

(ii) The activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) The Board or appropriate Reserve Bank has notified the company that a notice under paragraph (a)(1) of this section is required.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR part 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* A notice under paragraph (a)(1) of this section is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity.

(h) *Emergency thrift institution acquisitions.* In the case of a notice to acquire a thrift institution, the Board may modify or dispense with the public notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary Federal regulator of the institution concurs.

§ 225.24 Factors considered in acting on nonbanking proposals.

(a) *In general.* In evaluating a notice under § 225.23, the Board shall consider whether the performance by the notificant of the activities can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices).

(b) *Financial and managerial resources.* Consideration of the factors in paragraph (a) of this section includes an evaluation of the financial and managerial resources of the notificant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on those resources.

(c) *Competitive effect of de novo proposals.* Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity *de novo* is presumed to result in benefits to the public through increased competition.

(d) *Denial for lack of information.* The Board may deny any notice submitted under this subpart if the notificant neglects, fails, or refuses to furnish all information required by the Board.

By order of the Board of Governors of the Federal Reserve System, effective October 26, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–27057 Filed 11–1–94; 8:45 am]

BILLING CODE 6210–01–P

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12 CFR Parts 225 and 262

[Regulation Y; Docket No. R–0853]

Applications Under Regulation Y

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: These rules implement the streamlined notice procedure recently enacted in Section 319 of the Riegle Community Development and Regulatory Improvement Act of 1994 ("Riegle Act") for the formation of a new bank holding company that results from a corporate reorganization of a bank by the current shareholders of the bank. These rules also implement section 321 of the Riegle Act, which amends the Bank Holding Company Act and the Bank Merger Act to authorize the Board to shorten the post-approval waiting period for bank acquisitions and mergers (during which time the United States Attorney General may review the competitive effects of a proposal approved by the Board) from 30 to 15 days with the consent of the United States Attorney General. Because the procedures prescribed by section 319 and section 321 are effective immediately, the Board has proposed the following as an interim rule that will take effect immediately. The Board is seeking comments on this interim rule, and will amend the rule as needed to address the comments received. The Board also is currently developing additional initiatives to reduce the regulatory burden associated with its application and notice procedures, and invites comment on any suggestions in furtherance of these initiatives.

DATES: Interim Rule effective on November 2, 1994; comments must be received by December 5, 1994.

ADDRESSES: Comments should refer to Docket No. R–0853 and may be mailed

to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the Board's Security Control Room inside the Eccles Building courtyard on 20th Street (between Constitution Avenue and C Street, NW) anytime. Comments may be inspected in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), or Terence F. Browne, Senior Attorney (202/452–3707), Legal Division; or Don E. Kline, Associate Director (202/452–3421), Nicholas A. Kalambokidis, Supervisory Financial Analyst (202/452–3830), or Larry R. Cunningham, Senior Financial Analyst (202/452–2701), Division of Banking Supervision and Regulation of the Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: Section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) ("BHC Act") requires Federal Reserve Board approval prior to consummating certain transactions resulting in the formation of a bank holding company, or in the acquisition by a bank holding company of shares or control of a bank, subject to certain exceptions. Section 319 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103–325, section 319, 108 Stat. 2160, 2224 (1994)("Section 319")) amends section 3 of the BHC Act to establish a notice procedure for the formation of a new bank holding company resulting from a corporate reorganization that involves substantially the same shareholders.[1] In connection with section 319, section 320 of the Riegle Act provides an exemption from the registration requirements of the Securities Act of 1933 for securities issued by a bank holding company pursuant to such a reorganization.

In addition, section 321 of the Riegle Act (Pub. L. No. 103–325, section 321, 108 Stat. 2160, 2226 (1994)("Section 321") permits the Board, with the consent of the U.S. Attorney General, to shorten the post-approval waiting period for bank acquisitions and mergers from 30 days to 15 days. The interim rule implement the provisions enacted in sections 319 and 321 of the Riegle Act. Comment is invited on all aspects of these proposals.

Formation of a New Bank Holding Company Under Section 319

By its terms, the notice procedure added by section 319[2] applies only if certain conditions are met. Specifically, the formation of a new bank holding company may be consummated 30 days after providing written notice to the appropriate Federal Reserve Bank if: (1) The shareholders of the bank will acquire, as a result of the reorganization, the shares of the newly formed bank holding company in substantially the same proportional interest as they held in the bank; (2) the bank holding company would meet, and its resulting subsidiary bank would meet, certain financial and capital standards; (3) the bank holding company would not, as a result of the reorganization, acquire other banking or nonbanking interests; and (4) during the 30-day notice period, the Reserve Bank or the Board does not object to the proposal.

Substantially the Same Shareholders

Under the interim rule, the requirement that shareholders of the bank acquire "substantially the same share interest" in the newly formed bank holding company would be met by proposals in which the shareholder or shareholders who lawfully control at least 80 percent of the shares of the bank at the time the notice is filed would acquire, immediately after the reorganization, at least 80 percent of the shares of the holding company in substantially the same proportion.

By the terms of Section 319, allowance is made for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law. Accordingly, under the interim rule, a shareholder of the bank will be considered to have substantially the same proportional interest in the holding company (notwithstanding a change in the percentage of shares controlled by the shareholder) if the shareholder interest increases, on a *pro rata* basis, as a result of either the redemption by the bank or bank holding company of shares from dissenting shareholders, or as a result of the acquisition of shares of dissenting shareholders by the remaining shareholders.

However, this notice procedure would not be available in cases in which any shareholder or group of shareholders acting in concert would, following the reorganization, own or control 10 percent or more of any class of voting shares of the bank holding company unless that shareholder or group of shareholders was authorized, after review under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) by the appropriate Federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank. Similarly, this procedure is not available in cases in which the exercise of dissenting shareholders' rights would cause a company that is not a bank holding company (other than the company in formation) to be required to register as a bank holding company. This procedure also is not available for the formation of a bank holding company organized in mutual form.

The Board seeks comment on other alternative formulations consistent with the statutory mandate that the reorganization involve substantially the same shareholders.

Financial Standards

Section 319 also establishes certain financial thresholds that must be satisfied to qualify for the abbreviated notice procedure. In particular, the bank to be reorganized must, at the time the notice is filed, be "adequately capitalized," as this term is defined in section 38 of the Federal Deposit Insurance Act. See 12 U.S.C. 1831o. In addition, Section 319 requires that the bank holding company resulting from the reorganization meet any "capital and other financial standards" established by the Board.

In the interim rule, the Board has established three requirements designed to identify reorganization proposals that do not raise financial or supervisory concerns that would benefit from review and explanation through an application process rather than an abbreviated notice procedure. Under the interim rule, a proposal to form a new one-bank holding company would qualify for the abbreviated notice procedures established in Section 319 if: (1) The

[1] Section 319 also amends section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3))—commonly referred to as the "Oakar Amendment"—to eliminate the requirement for prior Board approval of transactions by banks owned by holding companies to merge with thrift institutions. Under the Riegle Act, Oakar transactions continue to require the prior approval of the appropriate Federal banking agency for the acquiring institution, and all Oakar transactions must comply with section 3(d) of the BHC Act, the "Douglas Amendment." No amendments to the Board's regulations are needed to implement these amendments to section 5(d)(3).

[2] Any application to organize a bank holding company that was filed with a Reserve Bank prior to September 23, 1994 will continue to be processed under the existing rules.

bank has received at least a composite "satisfactory" rating at its most recent examination, in the event that the bank has been subject to examination; (2) the amount of debt that the bank holding company would assume at the time of the reorganization, and the proposed means of retiring this debt, would not place undue burden on the holding company or its subsidiary on a *pro forma* basis; [3] and (3) at the time of the reorganization, neither the bank nor any of its officers, directors or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate Federal banking agency.

Section 319 provides that this abbreviated notice procedure is only available to a bank holding company that would not acquire any additional banks or any nonbanking interests as part of the reorganization.

Contents of Notice

To begin the notice period under the interim rule, the notificant organization must submit to the appropriate Reserve Bank a written notice that includes: (1) Certification that the requirements of Section 319 and the Board's implementing rule are met by the proposal; (2) a list of the shareholders of the bank prior to the reorganization and of the holding company following the reorganization, identifying the percentage of shares held by each shareholder in the bank and proposed to be held in the new holding company; (3) a description of the resulting management of the proposed bank holding company and its subsidiary bank, including (i) biographical information regarding any officers, directors or shareholders of the resulting bank holding company who were *not* senior officers or directors of the bank prior to the reorganization, and (ii) a detailed history of the involvement of any officer, director or shareholder of the resulting bank holding company in any administrative or criminal proceeding; (4) *pro forma* financial statements for the bank holding company, and a description of the amount, source and terms of debt, if any, that the bank holding company proposes to incur, and information regarding the sources and timing for debt service and retirement; and (5) verification that notice of the proposal has been published in a newspaper of general circulation in the community in which the bank is located that provides an opportunity for interested persons to comment on the notice for a period of at least 15 calendar days.

As indicated above, the interim rule requires that the applicant publish notice of the proposed reorganization and invite public comment for a period of at least 15 days. This request for public comment is consistent with the Board's practice of publishing notice of all bank holding company formations and bank expansion proposals so that the public may comment in particular on the bank's record of serving the convenience and needs of the community under the Community Reinvestment Act.

Objections to Notices

Within 7 calendar days of receipt of a notice containing all the information required under this interim regulation, the appropriate Reserve Bank will provide a written acknowledgement of receipt of the notice indicating that the transaction may be consummated following the 30th calendar day after the date the notice was received by the Reserve Bank unless the Reserve Bank or the Board objects to the proposal during that time. The Reserve Bank may provide written notice of approval of the reorganization at an earlier time during the notice period.

If during the notice period the Board or the Reserve Bank objects to the proposal, the bank holding company must file an application under section 3 of the BHC Act.[4] In this case, the notificant will immediately be notified of the reason for the objection, and of any additional information that may be needed to complete an application.

Shortening of Post-Approval Waiting Period Under Section 321

Currently, section 11(b)(1) of the BHC Act (12 U.S.C. 1849(b)(1)) prohibits a bank holding company that has received approval for a transaction under section 3 of the BHC Act (other than transactions involving a probable bank failure or an emergency) from consummating the transaction prior to the thirtieth day following Board approval of the proposal in order to provide the United States Attorney General time to review the transaction for any adverse effects on competition in banking or the concentration of banking resources. The Bank Merger Act contains a similar provision applying post-approval waiting period to bank merger proposals. See 12 U.S.C. 1828(c)(6).

Because Section 319 creates an exception from the application and approval process established by section 3 of the BHC Act, a notificant who has met the criteria of Section 319 and the interim rule does not appear to be subject to the post-approval waiting period established under section 11 of the BHC Act.

With regard to other acquisitions under section 3 of the BHC Act or under the Bank Merger Act, section 321 of the Riegle Act ("Section 321") authorizes the Board to shorten the post-approval waiting period in any case to a period of not less than 15 days, provided the Board has received no adverse comment from the Attorney General relating to competitive factors and the Attorney General concurs with the Board's decision to shorten the waiting period. Section 321 does not affect processing of applications involving probable bank failures or emergencies. The interim rule incorporates these revisions to the Board's Regulation Y. The Board is currently discussing with the U.S. Department of Justice the types of cases that may qualify for this shortened post-approval waiting period, and invites public comment on the types of cases where this would be appropriate.

As described above, the Board has adopted the following interim rule which shall be effective immediately, and invites public comment on all aspects of this interim rule. The Board also invites suggestions on other means of reducing the regulatory burden associated with its application and notices procedures.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities. This interim rule will reduce the regulatory burden imposed by the Board's procedures on small bank holding companies in formation, and the Board is inviting public comment on additional ways to reduce regulatory burden.

Paperwork Reduction Act Analysis

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

[3] For a banking organization with consolidated assets, on a *pro forma* basis, of less than $150 million (other than a banking organization that would control a *de novo* bank), this requirement would be satisfied if the proposal would comply with the Board's policy statement on small one-bank holding company formations (12 CFR part 225, appendix C).

[4] *See* 12 CFR 225.14. If the Reserve Bank or Board believes that issues might readily be resolved within the notice period without having to issue a formal objection, the Reserve Bank or Board may request additional information during the notice period to supplement the notice.

imposed in connection with certain applications.

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, Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR parts 225 and 262 as follows:

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 § 225.11, the introductory text is revised to read as follows:

§ 225.11 Transactions requiring Board approval.

The following transactions require an application for the Board's prior approval under section 3 of the Bank Holding Company Act except as exempted under § 225.12 or as otherwise covered by § 225.15 of this part:

* * * * *

3. In § 225.14, paragraph (i) is revised to read as follows:

§ 225.14 Procedures for applications, notices, and hearings.

* * * * *

(i) *Waiting period.* A transaction approved under this subpart, other than a transaction approved under § 225.15, shall not be consummated until 30 days after the date of approval of the application, except that a transaction may be consummated:

(1) Immediately upon approval, in the event that the Board has determined under paragraph (h) of this section that the application involves a probable bank failure;

(2) On or after the fifth calendar day following the date of approval, in the event that the Board has determined under paragraph (h) of this section that an emergency exists requiring expeditious action; or,

(3) On or after the fifteenth calendar day following the date of approval, in the event that the Board has not received any adverse comments from the United States Attorney General relating to the competitive factors and the Attorney General has consented to such shorter waiting period.

4. A new § 225.15 is added under Subpart B to read as follows:

§ 225.15 Notice Procedure for One-Bank Holding Company Formations.

(a) *Transactions which qualify under this section.* An acquisition by a company of control of a bank may be consummated 30 days after providing notice to the appropriate Reserve Bank in accordance with paragraph (b) of this section, provided that all of the following conditions are met:

(1) The shareholder or shareholders who control at least 80 percent of the shares of the bank would control, immediately after the reorganization, at least 80 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law;[5]

(2) No shareholder or group of shareholders acting in concert would, following the reorganization, own or control 10 percent or more of any class of voting shares of the bank holding company unless that shareholder or group of shareholders was authorized, after review under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) by the appropriate Federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;[6]

(3) The bank is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o));

(4) The bank has received at least a composite "satisfactory" rating at its most recent examination, in the event that the bank has been subject to an examination;

(5) At the time of the reorganization, neither the bank nor any of its officers, directors or shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate Federal banking agency;

(6) The company demonstrates that any debt that it would incur at the time of the reorganization, and the proposed means of retiring this debt, would not place undue burden on the holding company or its subsidiary on a *pro forma* basis;[7]

(7) The holding company would not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and

(8) During this period, neither the appropriate Reserve Bank nor the Board has objected to the proposal or required the filing of an application under § 225.14 of this subpart.

(b) *Contents of notice.* A notice filed under this subsection must include:

(1) Certification by the notificant's board of directors that the requirements of 12 U.S.C. 1842(a)(C) and this section are met by the proposal;

(2) A list identifying the shareholders of the bank prior to the reorganization and of the holding company following the reorganization, and specifying the percentage of shares held by each shareholder in the bank and proposed to be held in the new holding company;

(3) A description of the resulting management of the proposed bank holding company and its subsidiary bank, including:

(i) Biographical information regarding any senior officers and directors of the resulting bank holding company who were *not* senior officers or directors of the bank prior to the reorganization; and,

(ii) A detailed history of the involvement of any officer, director or shareholder of the resulting bank holding company in any administrative or criminal proceeding;

(4) *Pro forma* financial statements for the holding company, and a description of the amount, source and terms of debt, if any, that the bank holding company proposes to incur, and information regarding the sources and timing for debt service and retirement; and,

(5) Verification that notice of the proposal has been published in a newspaper of general circulation in the community in which the bank is located that provides an opportunity for interested persons to comment on the notice for a period of at least 15 calendar days.

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[5] A shareholder of a bank in reorganization will be considered to have the same proportional interest in the holding company if the shareholder interest increases, on a *pro rata* basis, as a result of either the redemption of shares from dissenting shareholders by the bank or bank holding company or the acquisition of shares of dissenting shareholders by the remaining shareholders.

[6] This procedure is not available in cases in which the exercise of dissenting shareholders' rights would cause a company that is not a bank holding company (other than the company in formation) to be required to register as a bank holding company. This procedure also is not available for the formation of a bank holding company organized in mutual form.

[7] For a banking organization with consolidated assets, on a *pro forma* basis, of less than $150 million (other than a banking organization that would control a *de novo* bank), this requirement would be satisfied if the proposal would comply with the Board's policy statement on small one-bank holding company formations (12 CFR Part 225, Appendix C).

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(c) *Acknowledgement of notice.* Within 7 calendar days following receipt of a notice under this section, the Reserve Bank shall provide the notificant with a written acknowledgement of receipt of the notice. This written acknowledgment shall indicate that the transaction described in the notice may be consummated on the 30th calendar day after the date of receipt of the notice if the Reserve Bank or the Board has not objected to the proposal during that time.

(d) *Application required upon objection.* The Reserve Bank or the Board may object to a proposal during the notice period by providing the bank holding company with a written explanation of the reasons for the objection. In such case, the bank holding company may file an application for prior approval of the proposal pursuant to section 225.14 of this subpart.

PART 262—RULES OF PROCEDURE

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

Authority: 5 U.S.C. 552, 12 U.S.C. 321, 1828(c), and 1842.

2. In § 262.3, paragraph (b)(1)(i)(D) is revised to read as follows:

§ 262.3 Applications.

* * * * *

(b) * * *

(1)(i) * * *

(D) To become a bank holding company (except as provided in 12 CFR 225.15), and

* * * * *

By order of the Board of Governors of the Federal Reserve System, effective October 26, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–27058 Filed 11–01–94; 8:45 am]

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