

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. 10794 ]  
July 26, 1995 ]

**BANK HOLDING COMPANIES**  
**Amendment to Regulation Y**

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

The Board of Governors of the Federal Reserve System has amended its Regulation Y — Bank Holding Companies and Change in Bank Control — to eliminate the requirement that a bank holding company obtain a Board determination that it no longer controls shares or assets sold to a third party under certain circumstances. The amendment is effective July 6, 1995.

Enclosed — for depository institutions, bank holding companies, and others who maintain sets of the Board's regulations — is the text of the amendment to Regulation Y as published in the *Federal Register*. Others may obtain copies by calling the Circulars Division (Tel. No. 212-720-5215 or 5216). Questions on Regulation Y may be directed to our Banking Applications Department (Tel. No. 212-720-5861).

WILLIAM J. McDONOUGH,  
*President.*

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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 July 6, 1995)

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#### FEDERAL RESERVE SYSTEM

##### 12 CFR Part 225

[Regulation Y; Docket No. R-0872]

#### Bank Holding Companies and Change in Bank Control

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

**ACTION:** Final rule.

**SUMMARY:** The Board is amending its Regulation Y to eliminate the need for a bank holding company to file a request with the Board for a determination under section 2(g)(3) of the Bank Holding Company Act that it no longer controls shares or assets that it has sold to a third party with financing if the purchaser is not an affiliate or principal shareholder of the divesting holding company, or a company controlled by the principal shareholder, and there are no officers, directors, trustees or beneficiaries of the acquiror in common with or subject to control by the divesting company. The Board believes that the elimination of the requirement for a determination of control for these types of divestitures will reduce the regulatory burden on bank holding companies without undermining the purposes of the Bank Holding Company Act. This proposal has been identified in connection with the Board's continuing effort to eliminate obsolete or unnecessary regulations or applications.

**EFFECTIVE DATE:** July 6, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Pamela G. Nardolilli, Senior Attorney (202/452-3289), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** Under section 2(g)(3) of the Bank Holding Company Act (12 U.S.C. 1841(g)), shares transferred by a bank holding company to any transferee where the transferee is indebted to the transferor or has one or more officers, directors, trustees, or beneficiaries in common with the transferor, are deemed to be controlled by the transferor unless the Board, after an opportunity for a hearing, determines that the transferor is not capable of controlling the transferee. On March 28, 1995, the Board proposed to amend § 225.32 of the Board's Regulation Y (12 CFR 225.32) to exempt from the presumption of control those divestitures where a bank holding company is financing the sale of assets or shares that it acquired so long as (i) the property is not sold to an affiliate or principal shareholder of the divesting holding company, or a company controlled by such a principal shareholder; and (ii) there are no officers, directors, trustees, or beneficiaries of the acquiror in common with or subject to control by the divesting company (60 FR 15881) (March 28, 1995).

A review of the 2(g)(3) determinations over the past ten years indicates that almost all control determinations under that section have arisen from bank holding companies selling property they acquired in satisfaction of a debt previously contracted (dpc property) where the bank holding company was trying to recoup its losses on a loan from the sale of the collateral. In these cases, the record indicates that the divestitures and financing arrangements have been conducted on an arm's-length basis, and there is no evidence of divesting companies exercising control of the assets after the sale. In other cases where a bank holding company sold an asset or subsidiary that it had acquired in the normal course of business and financed the sale of the asset or subsidiary, the assets were sold because,

in most cases, the bank holding company was no longer interested in engaging in that business.

The elimination of the requirement to obtain a control determination will reduce the regulatory burden on bank holding companies without eliminating the Board's ability to supervise any attempt to control the divested asset in the future. Although the Board would no longer require a bank holding company to obtain a control determination, the Board can take appropriate supervisory action if control of a divested asset is found to persist through the examination process or by other means. In addition, the Board would continue to require a divesting company to obtain a 2(g)(3) determination if: (1) the asset were transferred to an affiliate or principal shareholder of the divesting holding company, or a company controlled by the principal shareholder; or (2) an interlock existed between the divesting company and the acquiring person. In these cases, the Board believes that there is a greater potential for continued control by the bank holding company that should be reviewed. The General Counsel will continue to review these divestitures on a case by case basis to determine if a control determination is appropriate. In addition, if a bank holding company needs a formal control determination for tax or other reasons, the Board will continue to process a request for a control determination even when the sale meets the regulation.

#### Public Comment

The Board received sixteen comments on its proposed amendment to Regulation Y. The Board received eight comments from Reserve Banks, five comments from commercial banking organizations, two comments from trade associations and one comment from a law firm. All commenters supported the Board's effort to reduce regulatory

burden. Two commenters suggested that the Board expand the scope of the regulation to include divestitures to companies with director interlocks. The Board receives few requests for divestitures involving interlocks and the Board does not believe that an exemption is needed at this time for these divestitures.

The comments also raise several administrative questions regarding the implementation of the regulation. In response to public comment, the Board has modified the proposed language to clarify the applicability of the proposed regulation. In another comment, one Reserve Bank questioned the status of pending 2(g)(3) requests and transactions. The Board believes that any pending 2(g)(3) request or transaction that meets the regulation's requirements should be covered by the new regulation and no further action is needed. Because a 2(g)(3) determination is a statutory requirement and some bank holding companies may need proof of the divestiture for tax or other reasons, one Reserve Bank recommended that the regulation state that if a bank holding company wants a 2(g)(3) determination, that the bank holding company can request a determination even if the regulation no longer requires it. As noted above, the preamble indicates that the Board will continue to provide 2(g)(3) determinations if a bank holding company requests such a determination.

#### **Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601

*et seq.*), the Board certifies that the final rule will not have a significant adverse economic impact on a substantial number of small entities and that any impact on those entities should be positive. The amendments would reduce regulatory burdens imposed by Regulation Y, and the amendment would have no particular adverse effect on other entities.

Pursuant to 5 U.S.C. § 553(d), the amendment to Regulation Y will become effective immediately. The change grants an exemption to bank holding companies, and therefore the Board waives the 30 days general requirement for publication of a substantive rule. In addition, any transaction that is subject to section 2(g)(3) but meets the regulation's requirements is now exempt and no further action is required.

#### **Paperwork Reduction Act Analysis**

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is contained in the final rule.

#### **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 set forth below:

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

1. The authority citation for 12 CFR

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(l), 3106, 3108, 3310, 3331-3351, 3907, and 3909.

2. In § 225.32, paragraph (a)(2) is redesignated as paragraph (a)(3) and a new paragraph (a)(2) is added to read as follows:

#### **§ 225.32 Divestiture proceedings.**

(a) \* \* \*

(2) Except in the case of a proceeding initiated under paragraph (f) of this section or § 225.31 of this subpart, the Board will regard the presumption of control in paragraph (a)(1)(i) of this section and section 2(g)(3) of the Bank Holding Company Act as inapplicable in the case of the sale or divestiture of assets or voting securities by a divesting company if:

(i) The acquiring person is not an affiliate or a principal shareholder of the divesting company, or a company controlled by such a principal shareholder; and

(ii) The acquiring person does not have any officer, director, trustee, or beneficiary in common with or subject to control by the divesting company.

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By order of the Board of Governors of the Federal Reserve System, June 29, 1995.

**William W. Wiles,**

*Secretary of the Board.*

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