

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7566]
February 7, 1975

BANK HOLDING COMPANIES

—Proposed Amendment to Regulation Y on Acquisition of Assets by Bank Holding Companies
—Technical Corrections to Regulation Y

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

Following is the text of a statement issued January 30, 1975 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today proposed to amend Regulation Y—regulation of bank holding companies—to clarify the circumstances under which a bank holding company may acquire assets of another company without prior Board approval.

The amendment proposed by the Board would require prior Board approval for any acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department or office of a company.

The Board invited comment on the proposal, including comment on establishment of standards for defining “all or substantially all,” to be sent to the Secretary of the Board not later than March 19, 1975.

Printed below is the text of the proposed amendment to Regulation Y. Comments thereon should be submitted by March 19, and may be sent to our Domestic Banking Applications Department.

In addition, enclosed is a copy of amendments to Regulation Y, containing technical corrections to the Regulation. Additional copies of the enclosure will be furnished upon request.

ALFRED HAYES,
President.

(Reg. Y)
BANK HOLDING COMPANIES
Nonbanking Activities

Pursuant to its authority under Sections 4(c)(8) and 5(b) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and 1844(b)), the Board proposes to amend Section 225.4(c) of its Regulation Y to clarify the circumstances under which a bank holding company engaged in nonbank activities, directly or indirectly through a subsidiary, may acquire assets of another company without first obtaining Board approval pursuant to Section 4(c)(8) of the Act.

On September 13, 1974, the Board issued an interpretation of Regulation Y regarding situations in which an acquisition of assets of a going concern by a bank holding company or its Section 4(c)(8) nonbank subsidiary might require prior Board approval. The interpretation noted that, in determining whether Board approval is required in connection with an acquisition of assets, it is necessary to determine (a) whether the acquisition is made in the ordinary course of business¹ or (b) whether it constitutes the acquisition, in whole or in part, of a going concern.² Among the examples illu-

strating transactions where prior Board approval would generally be required was a transaction involving the “acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department or office thereof.”

Section 225.4(c)(3) of Regulation Y provides, in effect, that acquisitions of assets in the ordinary course of business do not require prior Board approval. It has come to the Board's attention that there may exist certain circumstances under which the above-mentioned portion of the Board's interpretation could be viewed as conflicting with Section 225.4(c)(3) of Regulation Y,

¹ Section 225.4(c)(3) of the Board's Regulation Y (12 CFR 225.4(c)(3)) generally prohibits a bank holding company or its subsidiary engaged in activities pursuant to authority of Section 4(c)(8) of the Act from being a party to any merger “or acquisition of assets other than in the ordinary course of business” without prior Board approval.

² In accordance with the provisions of Section 4(c)(8) of the Act and Section 225.4(b) of Regulation Y, the acquisition of a going concern requires prior Board approval.

(OVER)

i.e., those instances in which the acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department or office thereof is made in the ordinary course of business. In order to avoid any ambiguity, the Board proposes to formalize the relevant portion of the interpretation by an appropriate amendment to Regulation Y.

Under the present provisions of the regulation (12 CFR 225.4(c)(3)), a bank holding company may acquire assets "in the ordinary course of business" without prior Board approval. The proposed amendment would prohibit, without prior Board approval, the acquisition of all or substantially all of the assets of a company, or a subsidiary, division, department or office thereof, even if such acquisition were made in the ordinary course of business.

The proposed amended subsection (3) of Section 225.4(c) of Regulation Y would read as follows:

SECTION 225.4—NONBANKING ACTIVITIES

* * *

(c) **Tie-ins, alterations, relocations, consolidations.** Except as otherwise provided in an order in a particular case, the following conditions shall apply with respect to every acquisition consummated or activity engaged in on the authority of section 4(c)(8) of the Act: * * * (3) except for acquisitions made in the ordinary course of business of less than substantially all of the assets of a company, or a subsidiary, division, department or office thereof,¹ no merger or acquisition of

assets to which the acquired company is a party shall be consummated without prior Board approval, if thereafter the bank holding company will continue to own, directly or indirectly, more than 5 per cent of the voting shares of such company or its successor.

¹ An acquisition of assets, the effect of which would be to eliminate the seller as a viable competitor in any geographic market, in the line of business to which the assets pertain, would be viewed by the Board for the purposes of this subsection as being an acquisition of "substantially all" of the assets.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, comments, or argument. Any requests for a hearing on this matter should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing. The Board also hereby solicits suggestions and comments on the establishment of standards for determining when an acquisition of assets would constitute "substantially all" of the assets of a company, or a subsidiary, division, department or office thereof.

Any views or requests for hearing should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than March 19, 1975.

Board of Governors of the Federal Reserve System

BANK HOLDING COMPANIES

AMENDMENTS TO REGULATION Y

The following are corrections in the Regulation Y pamphlet dated June 24, 1974. (Corrections are italicized.)

SECTION 225.3—ACQUISITION OR
RETENTION OF BANK SHARES
OR ASSETS

* * *

(c) *Applications to retain shares acquired in a fiduciary capacity.* * * *

SECTION 225.4—NONBANKING
ACTIVITIES

(a) *Activities closely related to banking or managing or controlling banks.*

* * *

(4) * * * (iii) making of call loans to securities dealers or purchase of money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances (such authorized loans and investments, however, may not be used as a method of channeling funds to non-banking affiliates of the trust company);

* * *

6(a) * * * (vi) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or *re-leased* * * *

6(b) * * * (vi) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or *re-leased* * * *

(11) providing courier *services* * * *

* * *

(12) providing management consulting advice⁹ * * *

⁹ * * * See also the Board's interpretation of bank management consulting advice (12 CFR 225.131).