PROPOSED AMPENDMENT TO REGULATION Y
Acquisition or Establishment of Nonbank Operations Subsidiaries
by Bank Holding Companies through their State Banks
— Comment Invited by January 30, 1989
— Hearing Scheduled for February 3

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

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

The Federal Reserve Board has issued for public comment a proposal to rescind the Board's existing rule in Regulation Y (Bank Holding Companies and Change in Bank Control) permitting bank holding companies, through their state banks, to establish or acquire nonbank companies engaged in activities that may be conducted by the parent bank (so-called operations subsidiaries).

The effect of this action, if adopted, would be to require holding companies to obtain approval under section 4(c)(8) of the Bank Holding Company Act (Act) for their subsidiary state banks to acquire or retain control of nonbank operations subsidiaries.

The Board requests comment on a proposal to establish an expedited notice procedure for bank holding companies seeking to establish or acquire operations subsidiaries through their state banks in the future.

The Board is also requesting comment on a proposal to permit bank holding companies that have established operations subsidiaries in reliance on the Board's current rules to retain all or most of these subsidiaries without further approval.

The present state bank operations subsidiary rule, adopted in 1971, permits state banks owned by bank holding companies to acquire, without approval under the Act, companies engaged in activities permitted by state law, even if these activities are not permissible for bank holding companies.

The Board has a similar rule permitting holding companies to acquire indirectly, through national banks, operations subsidiaries in accordance with the Comptroller of the Currency's regulations. No action is proposed at this time on the national bank rule.

Written comments must be submitted to the Board by January 30, 1989.

Enclosed — for all depository institutions and bank holding companies in this District — is a copy of the text of the Board's proposal, which has been reprinted from the Federal Register of December 5; copies will be furnished to others upon request directed to the Circulars Division of this Bank (Tel. No. 212-720-5215 or 5216). Comments on the proposal should be submitted by January 30, 1989, and may be sent to the Board of Governors, as indicated in the notice, or to our Domestic Banking Applications Division.

Also enclosed is a copy of a Board press release announcing the scheduling of an informal hearing on the proposal for February 3, 1989, at the Board's offices in Washington, D.C.

E. GERALD CORRIGAN,
President.
December 12, 1988

The Federal Reserve Board today scheduled an informal hearing for February 3, 1989, on a recent proposal to rescind the Board's current rule that permits state banks in a holding company to acquire all of the shares of a company engaged in nonbanking activities that the state bank is permitted to conduct directly.

This proceeding has been scheduled in response to several requests for a hearing on the Board's proposal.

The hearing will begin at 10 a.m., in Dining Room E, fifth floor of the Board's Martin Building, 20th and C Streets, N.W., Washington, D.C.

Any person desiring to make a presentation at the hearing is requested to notify Scott Alvarez, Senior Counsel, Legal Division, (202) 452-3583, no later than January 30, 1989. Requests should include specific names of the persons desiring to present information, the general nature of the matters that will be presented, and the amount of time desired for the oral presentation.

A schedule of witnesses and the time allotted for presentations will be distributed prior to the date of the hearing.

[Enc. Cir. No. 10274]
SUMMARY: In light of a number of recent developments, the Federal Reserve Board is soliciting public comment regarding a proposal to rescind its existing regulation permitting bank holding companies to acquire, through their subsidiary state banks, shares of companies engaged in activities that the bank is permitted to conduct under state law, so-called operations subsidiaries. If the existing rule is rescinded, bank holding companies would be required by the Bank Holding Company Act to obtain approval under section 4(c)(8) of the Act prior to establishing or acquiring, through their state banks, operations subsidiaries, unless the transaction is otherwise authorized under the Act.

The Board is also requesting comment regarding a proposal to grandfather all or most existing subsidiaries of holding company banks acquired in reliance on, and in conformance with, this regulation. In addition, the Board requests comment on a proposal to establish an expedited notice procedure for future proposals by bank holding companies, through their state banks, to establish or acquire operations subsidiaries under section 4(c)(8) of the Bank Holding Company Act.
DATE: Comments must be received by January 30, 1989.

ADDRESS: All comments, which should refer to Docket No. R-0652, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2222, 20th and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452-3583), Scott G. Alvarez, Senior Counsel (202/452-3583), Legal Division; or Sidney M. Susan, Assistant Director (202/452-2638), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Board has had under review for some time the legal and policy issues associated with the application of the nonbanking provisions of section 4 of the Bank Holding Company Act (\"BHC Act\") to subsidiaries of holding company banks. In light of a number of developments, including the enactment of the insurance amendments to section 4(c)(8) of the Act, the expansion of the powers authorized for subsidiaries of state banks under a number of state statutes, petitions and requests for rulemaking by a number of parties regarding the coverage of these subsidiaries under the Act, and the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit in AMBAC, the Board has decided that it is now appropriate to resolve these issues.

Accordingly, after reexamining the governing provisions of the Act, the Board has decided to ask for public comment on a proposal that would rescind its existing regulation that permits state banks owned by bank holding companies to acquire, without approval under the Bank Holding Company Act, so-called operations subsidiaries—companies that are wholly-owned by the state bank and that engage only in activities that the bank may conduct directly under state law. The result of this proposed amendment would be to require bank holding companies to obtain approval under the Act for their subsidiary state banks to acquire or retain control of such operations subsidiaries or their voting shares, unless control of the subsidiary is permitted without an application under one of the other limited exemptions in the Act (e.g., for servicing activities). The proposal would provide grandfather rights for certain existing operations subsidiaries and establish expedited notice procedures for future acquisitions of operations subsidiaries by holding company state banks.

The Board's state bank operations subsidiary rule, which was adopted in 1971, provides that state banks owned by bank holding companies may, without Board approval under the Act, acquire or retain all of the voting shares of companies that engage solely in activities that the bank may conduct directly under applicable state law, at locations at which the bank may conduct the activity and subject to other limitations that would be applicable if the bank were conducting the activity. The Board has a similar rule for operations subsidiaries of national banks authorized in accordance with regulations of the Comptroller of the Currency.

In adopting these rules in 1971, the Board noted that it did so based upon notions of competitive equity between independent banks and holding company banks and in the absence of evidence that acquisitions by holding company banks were resulting in evasions of the Act. 49 FR 7977 (1984). At that time, the powers of operations subsidiaries of banks were limited and approval for operations subsidiaries was required by the banking authorities. Thus, there was no significant conflict between the scope of activities permitted for bank holding companies and their direct and indirect nonbank subsidiaries. In addition, in connection with its 1983 update and revision of Regulation Y, the Board received substantial comment that these rules were not consistent with the terms and the intent of the BHC Act because they permitted holding companies to acquire, through subsidiary banks, companies engaged in activities not permissible under the Act. The Board has also become concerned that the risk nonbanking activities in subsidiaries of banks outside the framework and the safeguards Congress established in the BHC Act for the conduct of nonbanking activities within a bank holding company organization.

For these reasons, the Board deferred final action on the operations subsidiary rules in its 1988 Regulation Y rulemaking pending completion of certain related proceedings involving the insurance and real estate investment and development powers of bank holding companies and consideration by Congress of the proposal of expanded powers for banking organizations and the structural arrangements and prudential limitations that should govern the exercise of these powers. The recent decision by the Court of Appeals in AMBAC that a holding company national bank may not acquire an operations subsidiary without compliance with section 4(c)(8)
of the BHC Act has focused the Board's attention on the need to resolve the issues raised by these rules.

A. Acquisition of Voting Shares and Subsidiaries by Holding Company State Banks Under the Nonbanking Provisions of the Bank Holding Company Act

In light of the above developments, the Board has reexamined the legal basis for the state bank operations subsidiary rule. Including, particularly, the scope of coverage of the nonbanking provisions of section 4(a) of the Act as they apply to subsidiaries of holding company banks, and the existence of any provisions in the Act that would permit acquisitions of operations subsidiaries without section 4(c)(6) approval. Based upon that reexamination and in light of judicial decisions regarding the Board's discretionary authority under the Act, the Board is concerned that the current state bank operations subsidiary rule may not be consistent with the terms of the Act. Accordingly, the Board is proposing to rescind this rule and is requesting public comment on the proposal.

Since enactment of the Act in 1956, the Board has consistently held that the nonbanking provisions of section 4(a) of the Act apply to the acquisition and retention of the voting shares of nonbank companies by holding company banks because such shares are deemed indirectly held by the parent holding company under the Act. See e.g. 12 CFR 225.101 and 102. As discussed in Part III, the literal language of the Act leaves no room for doubt as to the correctness of this position. The overall structure of the Act, reflecting the line drawn by Congress in the Act between banking and nonbanking companies, and its legislative history and intent support this position.

Accordingly, the Board believes that when a bank controlled by a bank holding company seeks to acquire or retain control of a nonbank company or its voting shares, that transaction is subject to the nonbanking provisions of section 4(a) of the BHC Act and, to be permissible, must fall within one of the exemptions to these prohibitions.

There is no express exemption in the Act that permits a state bank owned by a bank holding company, without compliance with section 4(c)(8), to acquire or retain control of a company engaged in any activity that may be authorized for the bank under state law or of the voting shares of such a company; and the Board cited no such exemption when the rule was adopted in 1971. Moreover, in light of judicial decisions since the operations subsidiary rules were adopted in 1971 concerning the scope of the Board's authority under the Act, the Board does not believe that it is authorized under the Act, as a matter of regulatory discretion or forbearance, to provide a regulatory exemption permitting such acquisitions without compliance with the closely related to banking and public interest standards and procedural requirements of section 4(c)(8).

For the foregoing reasons, the Board is asking for comment on a proposal to rescind the state bank operations subsidiary rule (12 CFR 225.22(d)(2)(ii)), thereby requiring that the acquisition and retention of operations subsidiaries and their voting shares meet the closely related to banking and public interest standards of section 4(c)(8) of the Act (unless the transaction fits under any of the other limited exemptions in the Board's Regulation Y).

B. Consistency of Proposal With Dual Banking System Principles

The Board wishes to emphasize that the principles of the dual banking system as reflected in the terms and legislative intent of the BHC Act would not upset the principles of the dual banking system. For the foregoing reasons, the Board is proposing rules that would not upset the principles of the dual banking system.

C. Impact of the Decision on Operations Subsidiaries of State Banks

Similarly, the Board does not believe that a decision to rescind the state bank operations subsidiary rule would unduly disrupt existing relationships or result in substantial new regulatory burdens. For example, the Board's proposal to eliminate the state bank operations subsidiary rule does not mean that it would be unlawful for state banks in a holding company system to establish operations subsidiaries or that their activities must be terminated or moved into the bank.

In this regard, the Board notes that most of the activities permitted for state banks are also permissible for bank holding companies under the BHC Act and that many bank holding companies already have approval to engage in the activities on the Regulation Y list directly and through their subsidiaries, including operations subsidiaries. Moreover, as discussed in Part II, the Board would emphasize that the proposal to rescind its state bank operations subsidiary rule gives appropriate consideration to grandfathering acquisitions by banks in reliance on the Board's current regulation.

In those cases where BHC Act approval has not been secured, the Board is proposing rules that would permit approval under an expedited notice procedure. The procedure would give full consideration to the authorization of activities by state bank regulatory authorities and would allow holding companies to proceed to acquire operations subsidiaries engaged in activities listed in Regulation Y unless notified within a short period of time.

---

* Under section 4(a) of the Act, a bank holding company may not acquire or retain direct or indirect control of the voting shares of any company other than a bank and may not control any subsidiary other than banks or other subsidiaries authorized under the Act. 12 U.S.C. 1841(a). Under the Act's definitions, a subsidiary of a holding company bank is deemed to be an indirect subsidiary of the holding company and its shares are deemed to be indirectly held by the holding company. 12 U.S.C. 1841(j)(1).

* Sen. e.g., Board of governors of the Federal Reserve System v. Dimension Financial Corp., 474 U.S. 361, 368 (1986) (if the language of the BHC Act is "clear and unambiguous, 'that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress'", quoting Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984).

---

National Corporation, 73 Federal Reserve Bulletin 878, 878-80 (1987). Because the nonbanking provisions of the Act apply only to holding companies and their nonbank subsidiaries, the direct activities of state and national banks and the actions of regulatory and state legislative bodies as they apply to the direct activities of banks are entirely unaffected by section 4 of the BHC Act. Thus, a decision that section 4 of the BHC Act applies to nonbank subsidiaries of holding company state banks does not limit the authority of states to determine the appropriate range of activities for banks, whether or not owned by holding companies, and does not upset the principles of the dual banking system.
that the activity of the subsidiary was inconsistent with the safety and soundness and other prudential provisions of section 4(c)(8) of the Act.

D. Implications for Bank Regulation

Application of the BHC Act to holding company state bank operations subsidiaries would further a fundamental policy objective of bank regulation in the powers area. The Board has taken the position that it is necessary to expand the activities in which banking organizations may engage, particularly in the securities area, in order to assure their competitive vitality in a rapidly changing financial environment. To accomplish this objective the Board has considered it essential that these activities take place in a subsidiary of a holding company rather than in a holding company bank or in a subsidiary of a bank.

The purpose of this organizational structure is to separate more effectively than through other available techniques new functions from the benefits of the federal safety net, which consists of access to Federal Reserve credit and federal deposit insurance. This separation is required for two reasons: (1) To assure that the risks of these activities are not passed on to the federal safety net, and (2) to assure that competition is not distorted by the support for depository institutions that is an aspect of the federal safety net. Application of the Act to holding company state bank subsidiaries would help to accomplish these goals by assuring that activities that pose a risk to the federal safety net will be conducted in entities that are more effectively insulated from their bank affiliates. The Board is sensitive to the concern that these goals might be achieved only as a result of additional regulatory burdens and at the cost of limiting the scope of initiative at the state level. The Board believes, however, that effective and flexible administration of the BHC Act, such as through the options discussed in Part II, will allow these goals to be accomplished without imposing substantial new regulatory burdens, or unduly limiting the initiative of state authorities to adopt banking powers to market realities.

E. Applicability of Section 4(c)(5) of the Act to Permit Acquisition of Shares by Holding Company State Banks.

The Board notes that section 4(c)(5) of the Act also does not by its terms authorize the acquisition of operations subsidiaries by holding company state banks. Under section 4(c)(5), a holding company may acquire, without an application or compliance with the prudential safeguards of section 4(c)(8) of the Act, "shares which are the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes". 12 U.S.C. 1843(c)(5). It is clear that section 4(c)(5) does not authorize bank holding companies or their subsidiaries to make either direct or indirect investments that may be permissible for state banks under state law. As noted above, there is no other provision in the BHC Act that would have this effect for state bank acquisitions.

The Board has interpreted section 4(c)(5) as permitting holding company state banks to acquire shares of companies only of the kinds and in the amounts listed or cross-referenced in section 5136 of the Revised Statutes as eligible for investment for national banks.1 1 The Board continues to believe that this section of its rules is fully consistent with the terms of the Act, and thus is proposing to readopt this rule.

This existing rule is also consistent with the Board's rules implementing section 4(c)(5) as they apply to the acquisition of shares by bank holding companies directly and by their direct nonbank subsidiaries. 12 CFR 225.22(c)(4). In 1971, at the time it adopted the state bank operations subsidiary rule, the Board also adopted rules implementing section 4(c)(5) that provide that a bank holding company and its nonbank subsidiaries may acquire voting shares under section 4(c)(5), but only if the shares were of the limited range explicitly eligible by federal statute for investment by a national bank.13 At that time, the Board recognized that if section 4(c)(5) is deemed to go beyond the limited range of shares authorized by statute for national banks to invest in, the carefully established Congressional framework in section 4(c)(6) for authorization of the activities of holding companies and their nonbank subsidiaries would be upset.14

11 12 CFR 225.22(d)(2)(i). The voting shares which are listed as eligible for investment under section 5138 include those of bankers' banks and bankers' bank holding companies up to 10 percent of capital and surplus, agricultural credit companies up to 20 percent of capital and surplus, and safe-deposit companies up to 15 percent of capital and surplus. Section 5138 also cross-references investments in stock specifically authorized under other statutes, which also are limited in amount. E.g., shares of Edge Act and Agreement Corporations up to 30 percent of capital and surplus, (12 U.S.C. 801, 818), small business investment companies up to 5% of capital and surplus, (15 U.S.C. 801), and bank service corporations up to 10% of capital and surplus (12 U.S.C. 1831).

13 12 CFR 225.22(c)(4).

14 The Board stated that unless section 4(c)(5) were so interpreted "Congress' purpose in amending section 4(c)(8) might be substantially nullified." 36 FR 1431, 1437; see 46 FR 32971 (1981).

In this regard, the Board notes that, unless section 4(c)(5) is read as reflected in § 225.22(d)(4) of Regulation Y, direct acquisitions by holding companies of finance, mortgage banking, leasing, data processing, and similar companies engaged in activities permissible for national banks would be permissible without regard to the capital adequacy, conflict of interest, safety and soundness and other public benefits criteria of section 4(c)(8). Moreover, these acquisitions, in many cases involving substantial portions of the capital resources of the holding company, would be subject to no regulatory review.

The Board notes that the Court of Appeals in AMBAC has granted a petition by the Comptroller for rehearing of the BHC Act issues in that case which involve the acquisition of shares by a holding company national bank in reliance on section 4(c)(5) and the Board's national bank subsidiary rule (12 CFR 225.22(d)(1)). Accordingly, the Board is taking no action to complete its rulemaking proceeding with respect to § 225.22(d)(1) at this time. Depending on the outcome of the AMBAC case and this rulemaking proceeding, the Board will consider appropriate action regarding this section of its rules.

F. Applicability of Section 7 of the Act to the Acquisition By Holding Company State Banks of Operations Subsidiaries and Their Shares.

The Board has also considered whether, as some argue, section 7 of the Act authorizes the Board's state bank operations subsidiary rule. Section 7 provides that "the enactment by the Congress of the (BHC) Act shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, bank holding companies, and subsidiaries thereof." 12 U.S.C. 1846.

That section does not, and was not intended to, limit the applicability of the nonbanking provisions of section 4, or provide an exemption for state bank operations subsidiaries. As the Supreme Court has noted, section 7 is intended only "to define the extent of the (Act's) pre-emptive effect on state law." Lewis v. BT Investment Managers, Inc. 447 U.S. 27, 49 (1980). The Senate Report on section 4(c)(8) might be substantially nullified." 36 FR 1431, 1437; see 46 FR 32971 (1981).
the original 1956 Act is explicit that section 7 was intended to make it clear that, while the states retained concurrent jurisdiction over banks and bank holding companies, "a State could not en masse invalidate inconsistent with the bill and therefore nullify its effect." 14

The fact that, under this interpretation of section 7 of the Act, the Board and the state banking authorities would share concurrent jurisdiction over nonbank subsidiaries of holding company state banks is not new in the federal banking laws. For example, the Board and the states share supervisory authority over state member banks, including the scope of their activities, 15 as do the FDIC and the states with respect to nonmember banks. 16

Moreover, the BHC Act grants the Board full examination, reporting, and subpoena authority over national and state banks owned by bank holding companies, even though the Comptroller and the states have similar authority over national and state banks, respectively. 12 U.S.C. 1844(c). The Supreme Court has recognized that the regulatory framework of the BHC Act overlaps with statutes administered by other banking authorities, and has left no doubt that, in such situations, the requirements of the BHC Act prevail. Board of Governors v. First Lincolnwood Corp., 493 U.S. 254, 240–41, 250–51 (1978).

II. Proposed Rules Governing the Acquisition and Retention of Operations Subsidiaries by Holding Company State Banks under the Bank Holding Company Act.

A. Generally

Rescission of the state bank operations subsidiary rule would require bank holding companies to obtain approval under section 4(c)(6) of the Act in order for their subsidiary state banks to acquire operations subsidiaries or for these subsidiaries to commence nonbanking activities (unless the acquisition falls under one of the other exemptions in the Act, e.g., servicing activities). In order to minimize the impact and regulatory burdens on these future acquisitions or proposals, the Board is requesting comment on an expedited 30-day notice procedure under which bank holding companies could seek the necessary approval under section 4(c)(8).

The Board also recognizes that a number of bank holding companies have acquired operations subsidiaries, through their subsidiary state banks, without approval under section 4(c)(6), in reliance on the Board's existing state bank operations subsidiary regulation. Rescission of this rule would require these bank holding companies to obtain approval under section 4(c)(8) of the Act to retain these operations subsidiaries unless the retention is otherwise authorized under the Act.

The Board notes that a great number of bank holding companies already have the necessary approval under section 4(c)(8) to acquire or retain operations subsidiaries engaged in a broad range of activities. For these companies, no further approval under the Act would be required if the operations subsidiary rule were rescinded. Under existing rules, a bank holding company that has secured approval under section 4(c)(8) to engage in a nonbanking activity, either directly or through a subsidiary, may open a new office or create a new subsidiary to conduct the activity, generally without further approval under the Act. 12 CFR 225.23(b)(1). For example, a bank holding company that has secured approval under section 4(c)(8) to engage in lending activities without geographic limit could conduct this activity on a de novo basis through any of its subsidiaries, including through an operations subsidiary of one of its state banks, without further approval under the Act.

Where the bank holding company has not previously obtained approval under section 4(c)(8) of the Act for a particular activity conducted by an operations subsidiary, the Board is proposing for comment a rule that would permit bank holding companies, without an application under section 4(c)(8) of the Act, to retain all or most existing operations subsidiaries acquired in reliance on the Board's current rule.

B. Future Acquisitions of Operations Subsidiaries

1. Listed Activities. The Board proposes to establish an expedited 30-day notice procedure for banking holding companies seeking approval under section 4(c)(8) of the Act to acquire, through a subsidiary state bank, an operations subsidiary engaged in activities the Board has previously found by regulation to be closely related to banking or for such a subsidiary to commence, or acquire assets or shares of a company engaged in, these activities. Under the proposed procedure, holding company state banks may establish operations subsidiaries, insofar as the BHC Act is concerned, after the holding company provides the appropriate Reserve Bank with 30 days prior written notice of the proposal. This expedited notice procedure would apply to operations subsidiaries that are wholly owned by the state bank, as under the existing rule, and that engage in activities that are both permissible under state law for the bank directly and that the Board has determined, by regulation, to be closely related to banking under section 4(c)(8). The Board asks for comment on whether the notice procedures should also be available for activities that have been found closely related to banking by order in an individual case.17

The notice required under this procedure would be limited to a brief description of the proposal and the activity that would be conducted by the operations subsidiary. A reference to the relevant provisions of Regulation Y or Board order that found the activity to be closely related to banking, and a copy of any notice or application submitted by the state bank to its primary regulator for approval to establish or acquire the operations subsidiary under state law is not required for the subsidiary to commence a new activity.

The appropriate Reserve Bank would act on all notices submitted under this procedure within 30 days of their submission in accordance with the existing expedited notice procedures in §225.23(a)(1) of Regulation Y. The proposed notice procedure would be available not only for de novo proposals, but also could be used for proposals to acquire the shares or assets of going concerns. As an alternative, the Board asks for comment on whether the notice procedure should be limited to proposals to engage de novo in listed activities, and a fuller application required for acquisitions of going concerns, as is the case under existing rules for bank holding companies. 12 CFR §225.23(a)(2).

The Reserve Board would have the discretion to require an application or fuller information regarding a proposal described in the notice, but would generally do so only where the bank holding company does not meet the Board's capital adequacy guidelines, or where the condition of the bank holding company organization or the nature of the proposed new activity warrants a more extensive analysis.

15 See e.g. 12 U.S.C. 222, 12 CFR 206.7(a)(1).
17 If the Board adopts this procedure, it proposes to amend its existing rules to allow bank holding companies to file notices for such acquisitions also. 12 CFR 225.23(a)(1).
The Board asks for comment on whether there are certain activities on the Regulation Y list of closely related to banking activities that should not be permitted for a subsidiary of a holding company bank, but only allowed through a direct subsidiary of the bank holding company.

2. Unlisted Activities. In the case of proposals by operations subsidiaries involving activities that have not been added to the list of permissible activities in § 225.25(b) of Regulation Y, the Board proposes to require an application under the procedures currently established in the Board’s regulations for such proposals. See 12 CFR 225.23(a)(3).

In considering these applications, the Board will give full consideration to the finding by the state that the activity is permissible for state banks in that state. In this regard, in determining whether an activity is closely related to banking, the Board and the courts have looked primarily to whether banks in fact conduct the activity.18

C. Retention of Existing Operations Subsidiaries

To deal with the impact of the proposed rescission of § 225.22(d)(2) on existing operations subsidiaries, the Board is requesting public comment on a proposal that would permit bank holding companies, without further approval under the BHC Act, to retain operations subsidiaries held by their subsidiary state banks in compliance with that regulation on November 21, 1988, the date of the proposal to rescind § 225.22(d)(2). Entitlement to this provision would be available only if the operations subsidiary was in compliance with that rule on November 21, 1988, that is, the subsidiary must be wholly-owned by the parent bank (except for directors' qualifying shares) and the subsidiary must be engaged only in activities that the parent bank could conduct directly under relevant state law at locations at which the bank could conduct the activities.

The Board notes that the courts have ruled in a number of cases that changes in regulations that adversely affect parties should ordinarily be applied only prospectively.19 The courts have been particularly concerned about retroactive application of new regulations in circumstances in which affected parties have reasonably relied on the existing regulation in conducting their affairs and would suffer detriment under the new rule.20

The Board believes it important to consider that the great majority of operations subsidiaries acquired in reliance on § 225.22(d)(2)(ii) engage in lending, leasing, trust and other activities that are closely related to banking and permissible for bank holding companies under section 4(c)(6). In addition, many of these operations subsidiaries were formed de novo, rather than through acquisition of going concerns, and their retention and continued operation would be likely to promote competition, increase customer convenience, and enhance operating efficiencies. Retention of these subsidiaries also would not involve additional expenditures of funds or increased debt. Consequently, the financial impact of the retention proposal should in most cases be negligible. For these reasons, the Board believes retention of these subsidiaries would, as a general matter, satisfy the requirements under section 4(c)(6) that the activity be closely related to banking and that the public benefits of the proposal outweigh its adverse effects.

The Board notes that under the grandfather proposal, bank holding companies, in some cases, could retain indirectly operations subsidiaries that engage in activities that the Board has not determined to be closely related to banking, such as certain insurance or real estate development activities.21 The Board requests comment on whether under the principles articulated by the courts regarding the retroactive application of agency rules, as discussed in the cases noted above, the Board is authorized to apply any rescission of its operations subsidiary rule only prospectively, thereby permitting bank holding companies to retain these subsidiaries as well as subsidiaries conducting activities that have been determined to be closely related to banking. The Board also seeks comment on whether, if it is so authorized, it should permit these subsidiaries to be retained or should prohibit their retention without an application and compliance with the standards of section 4(c)(6) of the Act.

The Board further asks for comment on whether, from the point of view of the prudential standards in section 4(c)(6), the Board should permit activities that involve high risk, such as real estate development if it were authorized under section 4(c)(6) of the Act for bank holding companies, to be conducted only through a direct subsidiary of the bank holding company subject to appropriate prudential limitations and not through subsidiaries of holding company banks.

The Board further asks for comment on whether the proposed grandfather rule should contain a provision permitting the Board to determine, in an individual case, after notice and opportunity for the affected bank holding company to comment, that a particular activity that has not previously been determined by the Board to be closely related to banking, is not permissible under the standards set forth in section 4(c)(6) of the Act and must, therefore, be terminated by the company.

Finally, the Board asks for comment as to whether to limit the grandfather proposal for operations subsidiaries established under § 225.22(d)(2) prior to November 21, 1988, to only those subsidiaries engaged in activities previously found by the Board, by regulation or order, to be closely related to banking under section 4(c)(6). Because these subsidiaries would meet the Act's closely-related to banking standard and because, as discussed above, the retention of the subsidiary would be likely to result in public benefits that outweigh potential adverse effects, the Board believes that this option would satisfy the terms of section 4(c)(6) and that individual applications to retain these subsidiaries would not be required. In support of this proposal, the Board notes that under section 4(c)(6) the Board may act by order or by regulation in authorizing nonbanking proposals. As discussed above, the Board is asking for comment on whether it should require that certain of these activities that may involve high risk should be conducted only through direct subsidiaries of the bank holding company.

As discussed in Part I, as a result of the Garn-St Germain Act insurance amendments, the Board has no discretion under section 4(c)(6) to permit bank holding companies or their nonbank subsidiaries to engage in the United States in insurance activities, except as specifically authorized in those amendments.22 One of these amendments permit bank holding companies to sell credit-related life, accident, health and unemployment insurance.

---

20 For example, the amendments permit bank holding companies to sell credit-related life, accident, health and unemployment insurance.
provisions permits a holding company subsidiary to continue any insurance agency activity it conducted on May 1, 1982. The U.S. Court of Appeals for the District of Columbia Circuit recently affirmed a Board decision recognizing that an operations subsidiary of a holding company state bank selling insurance on May 1, 1982, in reliance on the Board’s state bank operations subsidiary rule, qualifies for this grandfather exception and may continue to sell insurance under section 4(c)(6). Accordingly, the Board believes that, if the state bank operations subsidiary rule is rescinded, state banks could continue to hold operations subsidiaries engaged in general or other insurance agency activities that they conducted on May 1, 1982, in accordance with the Board’s state bank operations subsidiary rule and without further application under the BHC Act.

In the event the grandfather rule is limited, as discussed above, the Board asks for comment on a proposal to permit bank holding companies to retain operations subsidiaries that do not qualify under the grandfather rule for two years in order to permit the bank holding company time to seek a determination from the Board that the particular activity satisfies the standards of section 4(c)(8). The Reserve Banks would be authorized to extend this two-year period for three additional one-year periods in appropriate cases.

III. Legal Framework Relating to the Proposed Recision of the State Bank Operations Subsidiary Rule

A. The Literal Terms of the BHC Act

The BHC Act establishes a comprehensive framework governing the acquisitions and activities of bank holding companies. Section 4 of the Act contains two prohibitions that together limit the nonbanking acquisitions and activities of bank holding companies to those expressly permitted under various specific provisions in the statute. Under these prohibitions, a holding company may not acquire or retain, directly or through a subsidiary, voting shares or subsidiaries unless the shares or subsidiary are authorized under one of the Act’s exemptions.

Section 4 of the Act provides that, except as set forth in the Act, bank holding companies may not (1) acquire or retain direct or indirect control of voting shares of “any company which is not a bank,” or (2) engage in activities other than banking or managing and controlling banks and other subsidiaries authorized under the Act and those activities permitted under the closely related to banking standards of section 4(c)(8) of the Act. Section 4 then sets out certain exceptions from these general prohibitions, the principal one being for companies engaged in activities the Board, after notice and opportunity for hearing, has determined to be so closely related to banking as to be a proper incident thereto.

By their terms, the prohibitions of section 4 apply not only to voting shares and nonbank companies controlled directly by a bank holding company but also to shares and nonbank companies controlled by the bank holding company indirectly through any of its subsidiaries. Section 2(g)(1) of the Act is explicit that “shares owned or controlled by any subsidiary of a bank holding company shall be deemed to control indirectly any shares owned or controlled by any of its subsidiaries.”

Section 4(a)(2) of the Act limits the direct activities of a bank holding company. The authorization to engage in banking portains to those banks that were themselves bank holding companies. Merchants National Corp., 73 Fed. Reg. 679 (1967).

Section 4(c)(8) of the Act permits a holding company to retain direct or indirect ownership or control of any voting shares of any company which is not a bank, or (2) retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company, or engage in any activities other than (A) those of banking, or of managing or controlling banks and other subsidiaries authorized under this Act, and (B) those permitted under paragraph (8) of subsection (c) (that is, those found by the Board to be closely related to banking).

The activity provision in section 4(a)(2) of the Act confirms that “shares owned or controlled by a bank holding company shall be deemed to control indirectly any shares owned or controlled by any subsidiary of the bank holding company.” 12 U.S.C. 1843(g)(1). The other exceptions to the general nonbanking provisions of the Act are set out in paragraphs (1) through (14) of section 4(c) of the Act and include exemptions for holding shares of servicing subsidiaries, of companies acquired to satisfy a debt previously contracted or in a fiduciary capacity, shares of the kinds and amounts eligible for investment by a national bank under section 5136 of the Revised Statutes, shares of an investment company, shares amounting to less than 5 percent of a company’s outstanding shares, shares of certain foreign companies, and shares of an export trading company. 12 U.S.C. 1843(c)(1) through (14). There are certain other grandfather exceptions found in section 4(a)(2) of the Act. 12 U.S.C. 1843(a)(2).

A holding company’s subsidiaries include direct as well as indirect subsidiaries. 12 U.S.C. 1843(d)(1). Thus, under the provisions of section 4(a)(2), a bank holding company could not manage or control an operations subsidiary unless control of that subsidiary was authorized under the Act.

Thus, under the unambiguous language of the statute, the voting shares of a company held by a holding company bank are indirectly owned or controlled by the parent holding company and, in order for the shares or subsidiary to be retained, they must fit within one of the exceptions to the general prohibitions in section 4(a).

This reading of the statutory language is confirmed by its legislative history. Congress added the attribution provisions in section 2(g)(1) to the Act in 1966 to "to confirm current interpretations of the Board [that] provide that a bank holding company shall be deemed to control indirectly any shares owned or controlled by any of its subsidiaries.

B. Other Provisions of the Act

Demonstrate that the BHC Act Applies to Shares of Nonbank Companies Held by Holding Company Banks

Two other sections of the BHC Act demonstrate that section 4 applies to the voting shares of nonbank companies owned by a holding company bank. The original sections 4(c)(2) and 4(c)(4) of the Act provided exemptions from the restrictions in section 4(a) for shares of a nonbank subsidiary. A "subsidiary" of a bank holding company is defined to include any "company" 25 percent or more of the voting shares of which is directly or indirectly owned or controlled by that holding company. Id. That the term "subsidiary" as used in the BHC Act encompasses banks is evident in provisions throughout the Act. E.g., 12 U.S.C. 1843(a)(2), 1844(c). Section 4(a)(3) itself confirms this when it limits holding companies to controlling "banks and other subsidiaries authorized under this Act." 12 U.S.C. 1843(a)(3).
nonbanking restrictions of section 4 for voting shares acquired by "any banking subsidiary * * * in satisfaction of a debt previously contracted in good faith" ("DPC") 30 and for shares acquired "by any banking subsidiary of a bank holding company, * * in good faith in a fiduciary capacity * * *" 31 it is obvious that there would be no need for these exemptions to section 4 for holding company banks unless the prohibition in section 4 applies to shares held by a holding company bank. The fact that Congress added these exemptions to the Act to exempt the fiduciary and DPC acquisitions of holding company banks is explainable only by the conclusion that Congress recognized and intended the Act to hold by a holding company bank. The prohibition in section 4 applies to shares held by a holding company bank. As explained above, Board interpretations expressing this view, issued in 1956 and 1957 contemporaneously with passage of the Act, were subsequently codified in section 2(a)(1) of the Act, 12 CFR 225.101 and 102. Moreover, the Comptroller of the Currency in congressional testimony in 1970, has stated that "there is no legal doubt" regarding this construction of the Act.

The opening language of section 4(a) of the present Act * * * states that no bank holding company shall "acquire direct or indirect ownership etc." of a nonbank company. There is no legal doubt that any acquisition by the national bank subsidiary would be an "indirect" acquisition by the (one bank holding company). 32

In 1971, the Board reaffirmed its view that section 4 applies to nonbank subsidiaries of holding company banks in connection with its promulgation of § 225.22(d) of Regulation Y (then § 225.4(e)), providing a regulatory exemption from the nonbanking prohibitions of the Act but only for wholly owned operations subsidiaries doing business at locations at which the state bank could conduct the activity and subject to limitations applicable to the bank. 33 Since 1956, acquisitions of companies engaged in activities not permissible for the bank or of less than 100 percent of the shares of a company engaged in bank-eligible activities has not been permitted under the Board's rules without compliance with section 4 of the Act.

The Board recently reaffirmed its view that the nonbanking provisions of the BHC Act apply to acquisitions by holding company banks of voting interests in nonbank companies and required divestiture by a holding company bank of such an interest that did not comply with the Board's regulations. 34

D. Views of Commenters on Act's Coverage to Acquisitions of Shares by Holding Company Banks

In response to the Board's request for comments regarding the real estate development activities of bank holding companies, a number of commenters have argued that the Board has no authority to regulate the activities of nonbank subsidiaries of holding company banks. The commenters argue that the BHC Act does not by its terms permit the Board to regulate the direct activities of holding company banks and that the legislative history of the Act indicates that Congress did not intend the BHC Act to confer such authority on the Board. Based on the argument that the BHC Act does not extend to the activities of banks owned by holding companies, the commenters argue that a nonbank subsidiary of a bank is also exempt from the Act because it is merely an incorporated department or division of the bank operating under color of the bank's charter and authority. These commenters suggest that Congress could not have intended to create the anomalous result of excluding holding company banks from the Board's authority under the BHC Act while granting the Board authority over the nonbank operating subsidiaries of those same banks.

The Board notes, however, that this view appears to advocate an interpretation of the Act that is inconsistent with the express terms of the BHC Act, which as noted apply to the direct or indirect nonbanking subsidiaries of a bank holding company without distinction between nonbank companies owned by the holding company and those owned by a bank subsidiary of the holding company. 35


31 See Bank Holding Company Act of 1956, Pub. L. No. 84-511, section 4(c)(4), 70 Stat. 133, 136 (1966). This section was amended in 1977, but continues to provide an exception for "shares held or acquired by a bank in good faith in a fiduciary capacity * * *." 12 U.S.C. 1843(c)(4) (1982).


36 See the Board's interpretation of the Act in 1956, which was issued contemporaneously with passage of the Act and explained in 1957, in which the Board interpreted the Act to apply to acquisitions of voting interests in nonbank companies and nonbank subsidiaries of a bank holding company without distinction between nonbank companies owned by the holding company and those owned by a bank subsidiary of the holding company.

37 In its notice of rulemaking, the Board stated its view that the proposed limitation "would not affect the scope of activities permitted to a bank holding subsidiary of a bank holding company, but could affect acquisitions of a nonbanking company by such a bank since any acquisition by a subsidiary bank would represent an indirect acquisition by the parent holding company." 38 FR 1631 (1971).
Since nonbank subsidiaries of holding company banks are by definition not banks, they are not excluded from section 4 of the Act.

Moreover, the commenters' view that a nonbank subsidiary of a bank is merely part of its bank parent appears to conflict with the facts generally associated with the formation of many such subsidiaries. They are separately incorporated entities, in many cases with different names, offices, and employees, and are formed largely in order to permit the parent to separate and insulate itself from the activities of the subsidiary in order to limit its liability for the activities conducted by the subsidiary.

In this regard, the Board notes that the other federal banking agencies have often expressed the view that subsidiaries of banks provide an effective mechanism to separate and insulate nonbanking activities from the bank and the insured deposits of the parent from risks arising from its ownership of the subsidiary. The FDIC has specifically recognized that a subsidiary of a bank is a separate entity, which should not be confused with the bank itself. In

1. Divestiture Provisions of Section 5(e) of BHC Act. Commenters also point to section 5(e) of the BHC Act, which allows the Board to order a bank holding company to terminate ownership or control of any nonbank subsidiary "other than a nonbank subsidiary of a bank" where the nonbank constitutes a serious risk to the safety and soundness of a holding company bank. 12 U.S.C. 1844(e). This provision was added to the Act in 1978 and is pointed to as evidence of Congressional intent that the Act does not apply to nonbank subsidiaries of holding company banks.

This exemption, however, merely recognizes that primary responsibility for the ongoing supervision of the bank and its safety and soundness rests with the bank's primary supervisor, which has adequate enforcement authority to protect the bank against safety and soundness risks from nonbank subsidiaries. This section does not in any way attempt to regulate the kinds of nonbanking activities that the nonbank subsidiary may conduct or by its terms exempt the activities of such a nonbank subsidiary from the Act. Indeed, the Board notes that the fact that Congress excluded nonbank subsidiaries of holding company banks from only this provision of the Act suggests that such subsidiaries are to be included as subsidiaries of the bank holding company. This, however, is not the intent of the provision. As the commenters suggest, that section 4 is entitled "Interests in Nonbanking Companies, establishes the rule that the primary federal supervisor of a bank must have concurrent authority over banks and their subsidiaries that are not subject to the Act, the exclusion in section 5(e) is unnecessary.

2. Board Authority Over Nonbank Subsidiaries of Holding Company Banks Under the Financial Institutions Supervisory Act of 1989. Similarly, some commenters have argued that the cease and desist authority of the Board under the Financial Institutions Supervisory Act of 1989 ("FISA") (12 U.S.C. 1818(b)(3)) does not extend to nonbank subsidiaries of holding company banks and that this demonstrates that the BHC Act also does not apply to such subsidiaries. This argument, however, appears based on a misreading of the statute. In fact, the terms of the cease and desist statute (12 U.S.C. 1818(b)(3)) confirm that section 4(a) of the BHC Act applies to subsidiaries of holding companies as indirect subsidiaries of the bank holding company. FISA grants the Board cease and desist authority over "any bank holding company and [to] any subsidiary (other than a bank) of a holding company, as those terms are defined in the Act." As noted, a subsidiary of a holding company bank is, as a matter of law, a subsidiary of the holding company and is, thus, contrary to the commenters' claims, subject to the Board's cease and desist authority.

The second sentence of section 1818(b)(3), in recognition of the Board's exclusive jurisdiction over holding companies, establishes the rule that the other federal banking agencies may not issue a cease and desist order against bank holding companies or their subsidiaries "(other than a bank or a subsidiary of that bank)." The parenthetical language is necessary to prevent the primary federal supervisor from losing cease and desist authority over banks and their subsidiaries that are also subsidiaries of a bank holding company. The parenthetical does not, however, mean, as some claim, that the Board has no cease and desist authority over nonbank subsidiaries of holding company banks. Thus, the cease and desist provisions recognize a distinction between holding company banks and nonbank subsidiaries of such banks and grant the Board concurrent authority over the nonbank subsidiaries of holding company banks. The concurrent cease and desist authority over nonbank subsidiaries of holding company banks is necessary to enable the Board to enforce the BHC Act as it applies to these subsidiaries while allowing the appropriate banking authority to enforce provisions of law for which it has responsibility. This grant of authority to the Board under FISA would be unnecessary if Congress had intended, as the commenters suggest, that nonbank subsidiaries of holding company banks were to be considered as part of the parent bank and outside the Board's jurisdiction for purposes of the BHC Act.

3. Legislative History of 1970 Amendments to BHC Act. Some commenters point to the following testimony of Chairman Burns regarding the 1970 Amendments to the BHC Act as support for the claim that Congress did not intend the BHC Act to cover subsidiaries of holding company banks:

We now have three Federal agencies regulating banks. The agencies that now regulate banks would continue to regulate banks. Let us say that you gave the power of regulation to the Federal Reserve Board. The Board would then be simply regulating the
bank holding companies, not the banks themselves. The banks would continue to function under their present supervisory authorities. ([W]e would not be examining the banks which we are not presently examining.

All that we would do, if this came to us at the Federal Reserve Board, would be to determine whether a given acquisition is or is not in accordance with the principles of the legislation and regulations that we might have drawn; or whether a divestiture is or is not proper in the circumstances or whether it is or is not being carried out.

But, we would not be examining the banks which we are not presently examining. We would not supervise banks we are not presently supervising. Therefore, the distribution of regulatory authority functions, as far as the banks are concerned, would remain entirely unchanged.

The testimony of Chairman Burns, however, reflects the Board's long-standing position that the Board would not exercise its authority to examine holding company banks and will defer to the primary supervisor with respect to safety and soundness matters. The testimony carefully points out that the 1970 Amendments would make no change in the distribution of regulatory authority "as far as banks are concerned." The testimony, however, says nothing about nonbank subsidiaries of holding company banks and in no way indicates that section 4(a) does not apply to the acquisition of shares or subsidiaries by holding company banks. As discussed above, the Board's long-held position predating Chairman Burns' testimony had been that the Act does apply to the acquisition of shares or subsidiaries by holding company banks. Moreover, three weeks after enactment of the 1970 Amendments, the Board reiterated this view in proposing rules to implement that legislation. 30 FR 1430, 1431, and 2929 (1971).

The Board has also considered the reference by some commenters to the House Banking Committee report associated with the 1970 Amendments stating that the nonbanking restrictions of section 4 apply only to bank holding companies and their nonbank subsidiaries and "not to the bank subsidiaries" whose activities are governed by other Federal and State law. H. Rep. No. 387, 91st Cong., 1st Sess. 15 (1969). This comment, however, is directed at the permissible activities of the subsidiary bank itself, and therefore does not address the applicability of section 4 to the nonbank subsidiaries of a holding company bank.

4. Consistency of Board Interpretation with Intent of BHC Act. In establishing the BHC Act framework, Congress was required to draw the line between banking and nonbanking activities in the Act in some manner. As the terms of the Act demonstrate, Congress rationally did so on the basis of whether the company conducting the activity is a bank or a nonbank. Thus, where the company is chartered and operated as a bank under the definition in the BHC Act, it is outside the scope of the nonbanking provisions of the Act. But where the company is not a bank, it is, consistent with the line drawn by Congress in section 4, subject to the nonbanking provisions of the Act—wherever located within a bank holding company system—and in order for these activities to be permissible, they must fit within one of the Act's authorizing provisions.

IV. Regulatory Flexibility Act Analysis

This rulemaking has been initiated to permit public comment on whether the Board is required to rescind its existing state bank operations subsidiary rule in light of the terms of section 4 of the BHC Act. If the Board is required to rescind its rule, the Board has proposed several procedures that are designed to mitigate the effect of this action on bank holding companies, including the economic impact on bank holding companies that may be small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). In particular, the Board notes that a great number of bank holding companies, including small bank holding companies, may acquire or retain, on the basis of this action, a number of bank holding companies, subsidiaries and their nonbank subsidiaries, that engage in activities already approved by the Board under the Act.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System. Holding companies. Reporting and recordkeeping requirements.

For the reasons set out in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)), the Board proposes to amend 12 CFR Part 225 as follows:

PART 225—[AMENDED]

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

Authority: 12 U.S.C. 1817(1)(13), 1818, 1843(c)(6), 1844(b), 3108, 3108, 3907 and 3909.

§ 225.2 [Amended]

2. The Board proposes to amend § 225.2 by redesignating existing paragraphs (g) through (l) as paragraphs (h) through (m), and adding a new paragraph (g) to read as follows:

(g) "Operations subsidiary" means a company (other than a bank) (1) all (but, except for directors' qualifying shares, not less than all) of the shares of which are owned by a state bank, and (2) that engages solely in activities that the state bank may itself conduct directly under relevant law, subject to the same limitations on those activities, including geographic limitations, as are applicable to its parent bank.

3. The Board proposes to amend § 225.22 by revising paragraph (d)(2) to read as follows:

§ 225.22 Exempt nonbanking activities and acquisitions.

(d) * * * *

(2) State Bank—(i) Securities Eligible For Investment. Insofar as the Bank Holding Company Act is concerned and without the Board's prior approval under this subpart, a state-chartered bank owned by a bank holding company may acquire or retain, on the basis of section 4(c)(6) of the BHC Act, securities of the kinds and amounts explicitly eligible for investment by a national bank under section 5136 of the Revised Statutes.

(ii) Grandfathered operations subsidiaries. Without the Board's prior approval under this subpart, a bank holding company may retain indirect ownership and control of an operations subsidiary and its voting shares that it owned and controlled through a subsidiary state bank on November 21, 1988, so long as the operations subsidiary:
(A) Was acquired and held in compliance with the Board's regulations governing operations subsidiaries of state banks in effect on November 21, 1988; and,
(B) Does not thereafter commence new activities or acquire shares or assets of another company except as otherwise authorized under this subpart.

§ 225.23 [Amended]
4. The Board proposes to amend § 225.23 by adding a new paragraph (a)(4) to read as follows:

(a) * * * * 
(4) Acquiring an operations subsidiary—(i) Listed activities. A notice is required under paragraph (a)(1) of this section for a bank holding company indirectly to acquire and control voting shares of an operations subsidiary engaged in activities listed in § 225.25, and for such an operations subsidiary to commence, or acquire the assets of a company engaged in, any such activity. The notice under this paragraph shall be processed pursuant to paragraph (a)(1) of this section as a notice to engage de novo in an activity listed in § 225.25.
(ii) Unlisted activities. An application is required under paragraph (a)(3) of this section for a bank holding company indirectly to acquire and control voting shares of an operations subsidiary engaged in an activity that is not listed in § 225.25, and for such an operations subsidiary to commence, or acquire the assets of a company engaged in, any such activity.

* * * * *

5. The Board proposes to amend the reference to "12 CFR 262.2" in the introductory text to paragraph (a) of § 225.23 to read "12 CFR 262.3".


William W. Wiles,
Secretary of the Board.

[FR Doc. 88–27847 Filed 12–2–88; 8:45 am]
BILLING CODE 6110–01–MI