FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0935]

Bank Holding Companies and Change in Bank Control (Regulation Y)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Board is proposing a comprehensive amendment of Regulation Y that is intended to improve the competitiveness of bank holding companies by eliminating unnecessary regulatory burden and operating restrictions, and by streamlining the application/notice process. Among other proposed revisions, the Board proposes to establish a streamlined and expedited review process for bank and nonbanking proposals by well-run bank holding companies. The Board also proposes to reorganize and expand the regulatory list of nonbanking activities and to remove a number of restrictions on those activities that are outmoded, have been superseded by Board order or do not apply to insured banks that conduct the same activity. In addition, the Board proposes several amendments to the tying restrictions, including removal of the regulatory extension of those restrictions to bank holding companies and their nonbank subsidiaries. A number of other changes have also been proposed to eliminate unnecessary regulatory burden and to streamline and modernize Regulation Y, including changes to the provisions implementing the Change in Bank Control Act and section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

DATES: Comments must be received by October 31, 1996.

ADDRESSES: Comments should refer to Docket No. R-0935, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may also be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, and to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in section 261.8(a) of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), Gregory A. Baer, Managing Senior Counsel (202/452-3236), Diane A. Koonjy, Senior Attorney (202/452-3274), Lisa R. Chavarria, Attorney (202/452-3904), Satish M. Kini, Attorney (202/452-3818), Legal Division; Molly Wassom, Assistant Director (202/452-2305), Sid Sussan, Assistant

Director (202/452-2638), Division of Banking Supervision and Regulation, 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 Street and Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Outline: The discussion of proposed revisions to Regulation Y is divided into the following sections:

A. Summary of principles applied in reviewing and revising Regulation Y.

B. Summary of proposed revisions.

C. Explanation of proposed changes to the procedures governing bank acquisitions.

D. Explanation of proposed changes to the nonbanking provisions.

E. Explanation of restrictions removed from permissible nonbanking activities.

F. Explanation of changes to tying rules.

G. Explanation of other changes.

Discussion:

A. Summary of the principles applied in reviewing and revising Regulation Y.

Regulation Y is the regulation the Board has adopted to implement the requirements of the Bank Holding Company Act (the BHC Act), the Change in Bank Control Act and provisions of the Federal Deposit Insurance Act. As required by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, the Board has conducted a comprehensive review of Regulation Y to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability while faithfully implementing statutory requirements. This review included discussions with staff of the other federal banking agencies regarding the implementation of common statutory provisions.

Based on this review, the Board proposes a comprehensive revision to Regulation Y that is intended to improve the competitiveness of bank holding companies by eliminating unnecessary regulatory burden and operating

restrictions, and by streamlining and expediting the application/notice process. The revisions proposed by the Board to Regulation Y are summarized in the following sections and explained more fully in sections C through G.

The Board invites comment on all aspects of its proposed revisions. In addition, the Board invites other suggestions on revisions to Regulation Y that would eliminate unnecessary burden while adhering to applicable statutory requirements and maintaining safety and soundness.

Approval process

Much of Regulation Y is comprised of procedures for evaluating applications and notices. A number of revisions are proposed to these procedures with the goal of eliminating, to the fullest extent permitted under current law, any unnecessary burden and paperwork.

Two important principles underlie the revisions that are proposed to the approval process for bank holding companies. First, the new regulation would establish objective and verifiable measures for each of the criteria set forth in the BHC Act and an expedited and nearly red-tape free approval process for those bank holding companies that meet these measures. Under this new procedure, a bank holding company that meets these objective measures should be able to expect little burden or delay from the approval process unless special circumstances demonstrate that a closer review is warranted. Second, the application/notice process should focus on an analysis of the effects of the specific proposal and should not normally become a vehicle for comprehensively evaluating and addressing supervisory and compliance issues at the applicant organization that can more effectively be addressed in the supervisory process.

Importantly, these principles reflect a change in approach to the application/notice process, both procedural and substantive. They recognize that the approval process is most effective as a gateway for identifying (and rejecting) organizations that do not have the resources or expertise to make an acquisition or conduct a particular activity; and that the on-site inspection and supervisory process is the most effective way to determine if a particular organization is in fact managing its subsidiaries or conducting an approved activity in a safe and sound manner and operating within its authority.

Based on these principles, a new streamlined approval procedure is proposed that would permit well-rated and well-run bank holding companies to acquire banks and nonbanking companies and to engage in permissible nonbanking activities de novo with the filing of a simple, short letter and only 15 days advance notice. A qualifying bank holding company would be required to

provide only minimal information in connection with a notice (basically a brief description of the proposal and certification that the financial and other criteria are met). Staff analysis of these proposals would be focused on verifying that the qualifying criteria are in fact met. As explained in more detail below, a qualifying bank holding company could make bank and nonbanking acquisitions using this streamlined procedure totaling up to 35 percent of the risk-weighted assets of the acquiring bank holding company during any 12 month period. This limitation on the size of acquisitions would not apply to the acquisition of banks by small qualifying bank holding companies so long as the pro forma consolidated assets of the holding company do not exceed $300 million. All bank acquisition proposals that exceed 35 percent of assets (or cause a small bank holding company to exceed $300 million in assets) or that involve bank holding companies that otherwise do not meet the qualifying criteria would be reviewed under the Board's current 30/60-day procedure.

Approximately 85 percent of the bank holding companies with consolidated assets in excess of $100 million would qualify generally for this expedited procedure and more than 50 percent of the applications/notices reviewed by the System during 1995 would have qualified for this new streamlined procedure. Adoption of this procedure would substantially reduce the paperwork that must be filed by a qualifying bank holding company, the staff analysis of proposals by these well-run organizations, and the time required to secure System action on these proposals. In addition to reducing burden on qualifying applicants, adoption of this new procedure should free up System resources to focus on cases raising more complex and difficult issues, thereby improving the processing time associated with these cases.

The new proposed procedure follows the approach taken in the regulatory relief bills currently pending before Congress but cannot reach the level of efficiency in the regulatory relief bills without a change in the terms of the BHC Act. For example, the BHC Act currently requires that a bank holding company obtain Board approval prior to acquiring an additional bank or commencing a nonbanking activity. Thus, the Board may not eliminate the prior approval process for bank or nonbanking proposals and may not adopt a post-consummation notification process in place of a pre-consummation approval process. However, the abbreviated prior notice procedure that is proposed here would satisfy the BHC Act by permitting consummation of a bank or nonbanking proposal at the expiration of a brief notice period. The proposed regulatory relief bill would eliminate the

prior approval requirement altogether for certain classes of nonbanking proposals and permit post-consummation notice.[1/]

As part of the review of the procedures governing bank acquisition proposals, the Board's policies governing public comment have been reviewed to assure that a meaningful opportunity for public comment is provided while at the same time providing for the efficient and timely processing of applications and notices. As discussed more fully below, the proposed revisions would retain the Board's self-imposed 30-day public comment period for bank acquisition proposals, with publication of these proposals required in the Federal Register and local newspapers. The proposal recommends, however, that the System limit the exercise of its discretion to consider untimely comments and adhere strictly to the Board's existing rule that only comments received during the public comment period be considered, absent a showing of extraordinary circumstances.

Other revisions have been proposed to the various procedures in Regulation Y to eliminate unnecessary burden and to make the application/notice procedure more focused and efficient. For example, the proposal would streamline the procedure for a bank holding company to obtain a waiver for transactions that are in substance a bank-to-bank merger subject to review by another federal banking agency, and would extend this waiver procedure to internal corporate reorganizations. In addition, the proposal would eliminate the 4-week pre-acceptance review period for bank acquisition proposals, thereby allowing prompt acceptance and review of bank acquisition proposals. These suggestions are outlined below and explained in detail in later sections of this document.

Nonbanking activities

Regulation Y also addresses the permissible nonbanking activities of bank holding companies. As noted above, a streamlined procedure is suggested for proposals by bank holding companies to acquire nonbanking companies and to engage de novo in permissible nonbanking activities. In addition, the "laundry list" of nonbanking activities that the Board has defined by regulation as "closely related to banking," and hence

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[1/] The regulatory relief bills in both the House and the Senate would allow well-capitalized and well-managed banks, without any prior notice, to engage de novo in nonbanking activities that have been approved by the Board by regulation. These companies would also be permitted, after providing the Board with 12 to 15 business days' prior notice, to acquire any bank or any nonbanking company engaged in a permissible activity so long as the bank or nonbanking company represents less than 10 percent of the assets of the acquiring bank holding company.

permissible, has been revised and reorganized, and a number of other changes suggested to improve the ability of bank holding companies to engage in nonbanking activities.

Several principles guided the suggested reforms in the nonbanking area. Most important is the premise that bank holding companies should be permitted to conduct nonbanking activities to the fullest extent permissible under the BHC Act and that the regulation should be sufficiently flexible to allow for industry changes in permissible activities without creating unnecessary additional filing burdens. Thus, definitions of permissible activities have been broadened and updated, and new procedures are proposed to make it easier for any interested person to obtain a Board decision regarding whether a new activity is permissible. The proposed revisions anticipate that the Board would be pro-active in authorizing new activities, especially as new activities are permitted for banks or as new financial activities develop, and recognize that, under the BHC Act, bank holding companies are authorized to conduct activities beyond the scope of activities that insured banks may conduct.

A comprehensive revision of the restrictions that govern the nonbanking activities of bank holding companies has also been conducted. This review drew on the experience that the System has developed over the past two decades in authorizing and supervising nonbanking activities and reflects removal of a significant number of restrictions that the System's experience has found are not necessary or are outdated. A basic tenet of the revisions proposed in this area is that a bank holding company should not be subject to supervisory restrictions on the conduct of a specific activity that would not apply to an insured depository institution conducting the same activity. Another precept guiding this review is that supervisory principles governing the conduct of an activity should be clearly explained, adjusted to take account of market developments and the System's experience in supervising the activity, and, wherever appropriate, uniformly applied to insured depository institutions and their affiliates on an interagency basis.

Accordingly, the proposed revisions eliminate restrictions on the conduct of specific activities that would not apply to insured depository institutions that conduct the same activity. Also eliminated were any restrictions that are outmoded or that the Board has already superseded by order. It is anticipated that, unless the Board determines otherwise with regard to a specific activity or company, these restrictions would be removed at the time of final adoption of the proposed regulation for all bank holding companies with authority to conduct the relevant activity, without requiring that individual bank holding companies obtain specific relief or additional consent.

In addition, the revisions contemplate that the Board, in conjunction with the other banking agencies wherever appropriate, will develop supervisory policy statements that govern the conduct of certain activities. A supervisory policy statement has the advantage of being more easily adjusted to reflect market developments and provides a vehicle for more comprehensive guidance on the conduct of a specific activity than individual regulatory restrictions.

The Board and the other agencies have made effective use of supervisory policy statements in other areas, most notably in providing guidance on the sale of securities and other nondeposit investment products on bank premises. System experience has been that bank holding companies have taken these statements seriously. Accordingly, the revisions anticipate that several restrictions that currently are contained in Regulation Y would be moved to supervisory policy statements that would be developed at a later date.

The proposed regulation continues to anticipate that the marketplace for already approved activities will develop and evolve. Bank holding companies may continue to participate in these market developments in permissible activities without seeking additional Board approval. In the past, there has on occasion been uncertainty regarding whether a particular development or variation in an activity represents a fundamental change that redefines the activity into a new activity for which an additional approval would be required under the BHC Act. To address this, a new procedure has been proposed outside of the application/notice process through which a bank holding company may, on an expedited basis, obtain Board confirmation that a given development or variation in an activity is permissible. These interpretations of the scope of permissible activities would be published and would allow all bank holding companies to participate in the development or variation without additional approval. This procedure would eliminate a number of notices filed by bank holding companies that are uncertain of the scope of permissible nonbanking activities.

Tying restrictions

A final principle underlying the proposal is that each restriction in Regulation Y should be reevaluated in light of developments in the marketplace in which nonbanking subsidiaries of bank holding companies operate. Application of this principle warrants significant changes to the Board's anti-tying regulation, which the Board already has revised substantially over the past two years. Section 106 of the Bank Holding Company Act Amendments of 1970 restricts tying arrangements by banks on the grounds that the unique role of banks in the economy, in particular their power to extend credit, would allow them to gain a competitive advantage in other markets. In 1971, the Board by

regulation extended the coverage of these anti-tying rules to bank holding companies and their nonbank subsidiaries. However, the Board's experience has shown that these nonbanking companies generally operate in markets that are notable for their competitive vitality. Accordingly, the proposed revisions eliminate the Board's regulatory extension of the anti-tying statute, leaving restriction of anti-competitive behavior by bank holding companies and their nonbank subsidiaries to the same general antitrust laws that govern their competitors.

Other changes

As explained in more detail below, these various principles have also led to a number of other suggested reforms to Regulation Y. In addition to proposing the suggestions discussed below, the Board invites suggestions on other revisions to Regulation Y that would further eliminate unnecessary regulatory burden and paperwork.

B. Summary of proposed revisions.

The Board seeks public comment on proposals to amend Regulation Y to:

Bank Acquisition Proposals

- Establish a streamlined 15-day notice procedure for proposals by well-capitalized and well-managed bank holding companies with "satisfactory" or better CRA performance records to acquire banks, within limits (this procedure would currently be available to approximately 85 percent of the bank holding companies with assets over $100 million and would have applied to approximately 50 percent of the applications/notices submitted to the System last year);

- Eliminate the pre-acceptance period for all filings to acquire a bank (thereby expediting processing of bank acquisition proposals by as much as 28 days);

- Provide for publication of newspaper and Federal Register notices regarding bank acquisition proposals up to 30 days before a filing for approval of the transaction is made;

- Adhere strictly to the Board's policies governing acceptance of public comments to require all comments on bank acquisitions to be submitted during the public comment period;[2/]

[2/] As part of its review of Regulation Y, the Board has delegated additional authority to the Reserve Banks to act on certain classes of protested bank acquisition proposals.

• Streamline the current waiver procedure for transactions that are in substance bank-to-bank mergers and expand the procedure to apply to internal corporate reorganizations by registered bank holding companies;

Proposals Involving Nonbanking Activities and Acquisitions

• Establish a streamlined 15-day notice procedure for proposals by well-capitalized and well-managed bank holding companies to engage de novo in permissible nonbanking activities and to acquire, within limits, nonbanking companies engaged in any activity permitted by regulation or permitted for that bank holding company by order;

• Revise and reorganize the laundry list of permissible nonbanking activities into fourteen categories of functionally related activities and permit bank holding companies to obtain approval at one time to engage in all activities on the list or within the same functional category;

• Broaden the scope and description of activities, including in particular, derivatives trading and investment activities, investment advisory activities, and management consulting activities;

• Expand data processing and management consulting activities to include, as an incidental activity, deriving up to 30 percent of total revenue from nonfinancial data processing and management consulting activities;

• Add to the regulatory laundry list of permissible nonbanking activities several nonbanking activities previously approved by the Board by order, including private placement of securities, acting as riskless principal in the sale of securities, acting as a futures commission merchant in the sale of nonfinancial futures and options on futures, providing career counseling services to employees in the financial industry, and providing asset management services;

• Remove from the regulation restrictions on the conduct of permissible nonbanking activities that have been superseded by Board order, are unnecessary or would not apply to the conduct by an insured bank of the same activity, including restrictions on the conduct of leasing activities, private placement and riskless principal activities, derivatives investment and advisory activities, futures clearing and execution activities, foreign exchange activities, the sale of payment instruments, tax planning and preparation activities, and consumer counseling activities;

• Eliminate the one year time limit on System approvals to engage de novo in permissible nonbanking activities for bank holding companies that maintain adequate capital and satisfactory examination ratings (this would allow a bank holding company to seek a single approval to engage in all permissible nonbanking activities);

• Establish a streamlined procedure outside the application process for bank holding companies and others to obtain an advisory opinion from the Board about the scope of permissible activities;

• Revise the Board's policy statement governing the investment advisory activities of bank holding companies to remove several restrictions that currently apply to bank holding companies that advise mutual funds;

• Provide for publication of Federal Register notices regarding nonbanking proposals up to 30 days before a filing for Board approval is made;

• Allow bank holding companies with approval to engage in any lending activity broader authority to acquire, in the ordinary course of business and without special Board approval, assets from third parties engaged in the same activity;

Revision of Tying Rules

• Remove Board-imposed tying restrictions that limit the ability of non-bank affiliates of a holding company to package their products, create exceptions from the statutory restriction on bank tying arrangements to allow banks greater flexibility to package products with their affiliates, and clarify that the tying restrictions do not apply abroad;

Bank Holding Company Formations

• Reduce the threshold qualifications and information requirements for the existing abbreviated procedure for bank holding company formations by current shareholders of a bank;

Change in Bank Control Act Filings

• Eliminate the current requirement that a person that has already received Board approval under the Change in Bank Control Act obtain additional approvals to acquire additional shares of the same bank or bank holding company;

• Add a definition of the term acting in concert and establish presumptions to resolve questions about when a group is acting in concert;

• Allow after-the-fact filings when a CIBC Act filing requirement is triggered by the action of an unrelated third party;

• Permit public notice of CIBC Act filings to be published 30 days in advance of filing notice with the System;

Other Changes

• Modify requirements for filing prior notice of changes in directors and senior executive officers of state member banks and bank holding companies and clarify the appeals process for rejected notices;

• Establish a regulatory presumption that exempts testamentary trusts from the definition of company in the BHC Act;

• Reduce from 30 to 15 the number of days notice required before a large stock redemption by a bank holding company, permit bank holding companies to take account of intervening new issues of stock in computing when a stock redemption notice must be filed, and allow small bank holding companies to make stock redemptions without notice if the holding company meets certain leverage and capital requirements applicable to small bank holding companies;

• Update and revise the Board's existing policy statement on small one-bank holding companies to reduce burden in the approval process for proposals to form small bank holding companies and by small bank holding companies to acquire additional banks; and

• Implement current Board decisions defining the terms class of voting securities and immediate family.

C. Explanation of proposed changes to the procedures governing bank acquisitions.

1. Streamlined Procedure for Well-Run Bank Holding Companies

The proposed revision would establish a 15-day notice procedure for acting on bank acquisition proposals by well-run bank holding companies if the following criteria are met:

• Well-capitalized. Both before and immediately following the transaction, the bank holding company, its lead insured depository institution and insured depository institutions controlling at least 80 percent of the total depository institution assets of the bank holding company are well-capitalized;[3/]

• Well-managed. At the time of the transaction, the bank holding company, its lead insured depository institution and insured depository institutions controlling at least 80 percent of the total depository institution assets of the bank holding company are well-managed (i.e., have received one of the two highest composite ratings at the most recent examination, a "satisfactory" management rating and at least a "satisfactory" compliance rating);

• Satisfactory CRA rating. At the time of the transaction, the lead insured depository institution and insured depository institutions controlling at least 80 percent of the total insured depository institution assets of the acquiring bank holding company have a "satisfactory" or better performance rating at the most recent CRA examination;

• Competition. In every relevant banking market as defined by the Board, the market share for deposits controlled by the acquiring bank holding company following the transaction is below 35 percent and the proposal conforms with the Department of Justice Horizontal Merger Guidelines as applied to banking organizations, in both cases relying on thrift weighting at 50 percent and without reliance on divestitures;

• Size of acquisition. During any 12 month period, the book value of the aggregate assets acquired by the bank holding company, combining all acquisitions under the expedited procedure for bank acquisitions with acquisitions under the expedited procedure for nonbanking proposals, does not exceed 35 percent of the consolidated total risk-weighted assets of the acquiring bank holding company as measured at

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[3/] A small bank holding company--defined as any bank holding company with assets under $150 million--would be required to meet certain debt-to-equity levels to qualify for this streamlined procedure.

the beginning of the 12 month period. This limitation would not apply to bank acquisitions by qualifying bank holding companies that have assets of less than $300 million on a pro forma basis;

• Interstate. Approval of the proposal is not barred under the provisions governing interstate acquisitions (e.g., meets relevant deposit concentration limits, State age requirements, and other applicable requirements);

• Consolidated Home Country Supervision. The acquiring bank holding company meets the requirement for consolidated home country supervision contained in the BHC Act; and

• No Supervisory Actions. At the time of the transaction, no significant supervisory action is pending against the acquiring bank holding company.

As of March 31, 1996, approximately 85 percent of the bank holding companies with assets greater than $100 million would qualify for these procedures. More than 50 percent of the applications/notices submitted by bank holding companies during 1995 would have qualified for this streamlined procedure and reduced filing requirement.

A bank holding company that meets these qualifications would be able to acquire a bank or bank holding company by providing the appropriate Reserve Bank with 15-day prior written notice of the transaction. Under this procedure, a bank holding company would be required to provide only limited information. The information requirements are specified in the proposed regulation and have been reduced to providing certification that the bank holding company and the transaction meet the requirements for the procedure, a description of the transaction and the parties, and certain pro forma information regarding the financial and competitive effects of the transaction. The bank holding company must also provide evidence that public notice of the transaction has been given sufficiently in advance to permit interested members of the public 30 days to submit their views regarding the proposal to the Board.

An identical expedited procedure is proposed for nonbanking proposals by well-capitalized and well-managed bank holding companies where the bank holding company proposes to engage de novo or to acquire a company engaged in a nonbanking activity that the Board has approved by regulation or, with limited exceptions designated by the Board, by order. The aggregate size limitation discussed above (i.e., an aggregate limit of 35 percent of assets during any 12 month period for all acquisitions under the bank and nonbanking expedited procedures) would limit the total amount of banking and nonbanking acquisitions that a bank holding company could make during any

12 month period under the streamlined notice procedures. Finally, because the CRA, interstate banking, and home country supervision requirements do not apply to transactions under section 4 of the BHC Act, no criteria would be established in these areas for nonbanking proposals under the expedited procedure.[4/]

The proposed procedure would permit the Board or the Reserve Bank to notify a bank holding company for any reason that this streamlined notice procedure is not available and that a full application--subject to the current application procedure--would be required. This provision provides a mechanism to address situations in which information obtained either in an examination or outside the examination process indicates that a more thorough review of the organization's ability to meet the statutory factors is warranted. For example, the Board could follow the normal 30/60-day procedure in cases that are subject to a substantive protest, that raise issues regarding the funding of a transaction or that raise concerns about the ability of the applicant adequately to manage the risks associated with a particular activity. It is anticipated that this mechanism would be used only sparingly and in extraordinary situations.

A company or proposal that does not qualify for the proposed streamlined procedure would follow the current application process, which provides for Reserve Bank action within 30 days of filing and Board action on more complex cases within 60 days of filing. As explained below, a number of steps are proposed to reduce the burden of the current application process. In the event that, during the review of a transaction under the expedited proposal, the Board determines that a bank holding company must follow the current approval procedure rather than the expedited procedure, the proposed regulation contemplates that the notice filed by the holding company under the expedited procedure would be accepted under the normal procedure and that the normal procedure will be deemed to have begun at the time that the expedited notice was filed.

In the case of the acquisition of a bank, the BHC Act requires that the primary supervisor for the bank to be acquired be given 30 calendar days in which to submit comments on the transaction. In practice, the primary supervisor generally allows the notice period to expire without filing comments. Moreover, financial, managerial, legal and safety and soundness concerns that are known to the primary bank supervisor are generally also known by the Board because of ongoing sharing of supervisory information. Accordingly, it usually serves no

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[4/] Consistent with Board precedent, the CRA criterion would apply to proposals by bank holding companies to acquire savings associations under section 4.

regulatory purpose to allow this 30-day notice period to serve as a constraint on the Board's action on a proposal.

Under the proposed procedure, the Reserve Bank would provide notice of a proposal to the primary supervisor. The proposed procedure contemplates that the System will act on any proposal within 15 days of receiving a filing regarding the proposal even though the period for obtaining comments from the primary supervisor has not expired. The new procedure provides, however, that the System's action is subject to revocation if the primary supervisor objects to a transaction within the relevant notice period. Because bank acquisition proposals may not be consummated for 15 days after System action--which is the post-approval waiting period established by statute to allow the Department of Justice to review a transaction--it is expected that the notice period for the primary supervisor will expire prior to consummation of a bank acquisition proposal.

The Board seeks comment on all aspects of this proposed procedure, including comment on whether the procedure is workable and likely to reduce burden and whether the proposed regulatory criteria are appropriate. The Board intends that the proposed expedited procedure apply to "well-run" bank holding companies, whether domestic or foreign, large or small. The Board seeks comment on whether the criteria proposed are appropriately defined to achieve this result. In this regard, the Board has already proposed an adjustment to the qualifying criteria for small bank holding companies (defined as bank holding companies with total assets under $300 million).

2. Elimination of the Pre-acceptance Period for Bank Acquisition Proposals

Currently, Regulation Y provides a period prior to acceptance of a filing involving a bank acquisition proposal during which the appropriate Reserve Bank reviews the informational sufficiency of the filing and may ask for additional information. An application is accepted for processing once the information requested during this pre-acceptance period is provided. A similar pre-acceptance period for nonbanking proposals was eliminated by the Board in 1993 and the experience with nonbanking proposals since that time indicates that the pre-acceptance period is not necessary.

Accordingly, the proposed revision to Regulation Y would eliminate the pre-acceptance period for all bank acquisition proposals. This change would shorten by as much as 28 days the period that a proposal is within the System, and would begin the processing of all applications involving a bank acquisition--both under the streamlined and standard procedure--on the date of submission of the required filing. The proposed revision to Regulation Y would provide that, within 7 calendar

days of receipt of a notice or application to acquire a bank, the appropriate Reserve Bank must either accept the filing as of the date of receipt or return the filing as informationally incomplete. It is expected that a filing that contains the information specified in the regulation or in the appropriate Federal Reserve form will, except in extraordinary circumstances, be accepted for action. The draft regulation would allow the Board or the Reserve Bank to request any additional information at any time during the period for review of the proposal, although one of the premises underlying the expedited procedure is that an analysis of transactions that qualify for expedited processing will be limited and information beyond the information stated in the regulation will only be requested for those proposals in special circumstances.

3. Timing of Publication

In the case of a bank expansion proposal, the Board's rules require that notice be published by the applicant in local newspapers and by the Board in the Federal Register. The Board initiated the newspaper publication requirement for bank acquisition proposals in order to solicit information from the local community regarding the effect of a proposal on the convenience and needs of the local community, and retained the requirement after the enactment of the Community Reinvestment Act. Public notice of nonbanking proposals is published only in the Federal Register.

Currently, the Board's rules require that newspaper notice of a proposed bank acquisition be published in a newspaper of general circulation no more than 7 days before or 7 days after the appropriate filing is made with the Reserve Bank. The Board publishes notice in the Federal Register of both bank acquisition proposals and nonbanking proposals upon receipt of a filing. In over 90 percent of the bank acquisition proposals filed with the System, no public comments are submitted. Consequently, the current publication schedule often results in substantial delay in action on a proposal in which no comments are submitted. For example, because the public comment period is typically 30 days, this publication schedule delays action on some proposals until up to 37 days after the proposal has been filed to allow for Federal Register publication.

Moreover, public announcement of a proposed bank acquisition usually well pre-dates the newspaper and Federal Register publication. This has led to confusion on the part of commenters about when a timely comment may be filed with the System.

To avoid this delay and confusion, the regulation would provide for newspaper publication of bank acquisition proposals up to 30 days prior to submission of a filing for System

approval, which is closer to the time of the actual public announcement of the proposal. In addition, the applicant would be permitted to request that the Board publish notice of a proposal in the Federal Register up to 30 days before a filing is made with the System. This change would apply to all bank and nonbanking proposals, including cases that qualify for the new streamlined procedures outlined above, and would allow more efficient processing of applications/notices while permitting the public a full comment period. In the case of proposals that qualify for the new streamlined procedure, advance publication of notice is essential to permit System action within 15 days following the filing.

4. Revision of Public Comment Procedures for Bank Acquisitions

As just noted, since 1960, the Board has provided by regulation for the publication of bank acquisition proposals. The Board's rules currently provide that all comments from the public regarding a proposed transaction must be received prior to the close of the public comment period. However, the rules also provide that the Board may, in its discretion, consider any untimely comment.

Since adoption of its publication rule, the Board has liberally used its discretion to consider all comments, in particular, supplemental comments filed by a commenter that has filed an initial timely comment, to the fullest extent practicable without delaying action on a proposal beyond the self-imposed 60-day processing schedule. There has been growing concern that this practice of accepting and considering public comments submitted after the close of the public comment period has encouraged some commenters to file comments after the close of the comment period, and other commenters to file cursory comments during the public comment period while submitting numerous and voluminous comments after the close of the comment period, sometimes as late as the day of the Board's consideration of the case.

The Board proposes to retain its current practice of requiring public notice of bank acquisition proposals and of providing commenters at least 30 days in which to develop and submit comments on bank acquisitions under the BHC Act. Similarly, public notice would continue to be given of all nonbanking proposals, with the public provided at least 14 days to comment on nonbanking transactions.

The Board also proposes, however, to adhere more strictly to its current rules, and--for both bank and nonbanking proposals--no longer to consider any comments submitted after the close of the comment period, including supplemental comments filed after the close of the comment period by a commenter that

had filed initial comments on a timely basis, except in extraordinary circumstances in which the commenter provides compelling evidence that it could not have submitted all of its comments in a timely fashion.[5/]

5. Streamlined Waiver Process for Proposals Involving Bank Mergers

The Board's current regulation permits bank holding companies to seek a waiver of the application filing requirement under the BHC Act for transactions that involve the acquisition of stock of a bank for an instant in time as part of a bank-to-bank merger. All of these transactions are subject to review by a federal banking agency under the Bank Merger Act, which requires review of the financial, managerial, competitive, convenience and needs and CRA effects of the bank merger. The Board established this waiver process to eliminate redundant review of these transactions by multiple federal banking agencies. The Board retained jurisdiction over these transactions and a modest review process because some transactions have an effect on the financial and other resources of the parent bank holding company, which is not subject to an analysis under the Bank Merger Act.

Under the Board's current waiver process, a bank holding company must provide 30 days advance notice to the System and file supporting information. A waiver is automatically granted at the end of that period unless the Board notifies the bank holding company that a full application is required. The Board received approximately 110 waiver requests in 1995.

The Board proposes to streamline the waiver procedure in three ways. First, the length of the review process for

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[5/] As part of its review of its policies and procedures governing applications/notices, the Board has delegated additional authority to the Reserve Banks to act on cases involving protests that raise individual consumer complaints (such as denial of an individual loan), allegations for which the commenter provides no substantiation, and cases involving an assertion of violation of a law where a court of the agency responsible for enforcing the specific law has not made a determination that the law was violated and the Board has determined the law is not within the Board's jurisdiction to interpret and enforce (such as State laws preserving the rights of minority shareholders and federal equal employment laws). In each of these areas, the Reserve Bank would be required to review the performance record of the applicant and could act only if the CRA, managerial and other statutory factors supported approval. The Board's Inspector General endorsed this change in procedure based on a review of the Board's application process.

waivers would be reduced to 10 days from 30 days. Thus, a bank holding company would receive a waiver for a qualifying transaction if the System does not notify the bank holding company prior to expiration of a 10-day waiver review process that a full application is required. Second, the regulation would be amended to specify the information that must be provided with a waiver request. That information would be limited to a copy of the Bank Merger Act filing made with the appropriate federal banking agency for the banks involved in the merger, and a description of the transaction at the bank holding company level, including the purchase price and the source of funding for the purchase price.

Third, the proposed regulation would make the waiver process available to internal reorganizations of bank holding companies, such as the transfer of banks within a registered bank holding company, the formation of new intermediate-tier bank holding companies, and the merger of intermediate-tier bank holding companies. Some of these transactions are not subject to a review under the Bank Merger Act. However, all of these transactions involve corporate reorganizations by registered bank holding companies that have received Board approval to control and operate the banks involved in the transaction. The Board has granted waivers for internal reorganizations in previous cases, on a case-by case basis.

In all cases in which a waiver is available, the Board would retain the right to require a full application in individual cases if the Board determines that circumstances warrant a full Board review and the Board notifies the bank holding company that a filing is required.

The Board seeks comment on these revisions to the waiver procedure, including whether the criteria identified in the proposal are adequate to assure Board review of transactions that involve significant issues under the standards set forth in the BHC Act.

6. Small Bank Holding Company Policy Statement

In 1984, the Board adopted a policy statement governing the formation of small one bank holding companies that recognized that there are public benefits to permitting small bank holding companies with well capitalized and well managed subsidiary banks to operate with levels of debt that are somewhat higher than ordinarily permitted for bank holding companies. The Board proposes to revise and update this policy statement to reduce the burden on small bank holding companies of the applications process, especially for less highly leveraged organizations, and to otherwise remove obsolete language. The revised language reflects that the policy statement has, for some time, been applied to small bank holding companies (regardless of the number

of subsidiary banks) otherwise meeting the statement's criteria, and not just to small one bank holding companies. The statement would also be revised to clarify that it applies to expansion proposals by small bank holding companies as well as to small bank holding company formations.

In addition, the statement would be updated to replace outdated language defining applicable capital levels with the requirement that all subsidiary banks be well-capitalized. Notifications to form small bank holding companies over banks that are well managed and in satisfactory condition, and that present no other issues, will be eligible for the expedited applications processing procedures if the pro-forma debt to equity ratio is 1.0:1 or less. The criteria under which these organizations could pay reasonable corporate dividends have also been simplified.

Other proposals to form bank holding companies will be subject to a focused review of the parent-level debt servicing ability or any other issue presented. It is not expected that these organizations will pay dividends until their leverage has been reduced to a 1.0:1 level.

The Board requests comment on these proposed revisions and, in particular, the effect of these revisions on proposals to form small bank holding companies and by small bank holding companies to acquire additional banks.

D. Explanation of proposed changes to the nonbanking provisions.

1. General Review and Updating of Nonbanking Activities

The principal authority for bank holding companies to engage in nonbanking activities is set forth in section 4(c)(8) of the BHC Act. That section generally provides that a bank holding company may seek Board approval to engage in, or acquire shares of a company engaged in, activities that the Board has determined, after notice and opportunity for hearing, "to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The statute provides that the Board may make this determination by order or by regulation. The Board has to date determined by regulation that 24 activities are "closely related to banking" and has determined by individual order that a number of additional activities are also "closely related to banking."

Once the Board has determined--either by regulation or by order--that an activity is "closely related to banking," the Board need not make that determination again in subsequent cases. Review of subsequent cases is limited to determining whether the conduct of the nonbanking activity by the applying bank holding

company would result in public benefits that outweigh the potential adverse effects (the "proper incident" test).

The list of nonbanking activities contained in Regulation Y (the "laundry list") is intended to serve the purpose of providing a convenient and detailed list of most of the activities that the Board has found to be closely related to banking and therefore permissible for bank holding companies. The Regulation Y laundry list also designates the activities that may be approved by the Reserve Banks under delegated authority, although the Board has delegated authority for Reserve Banks to act on proposals involving a number of activities approved by order during intervals between modifications of Regulation Y.

As explained above, the Board proposes to establish an expedited procedure for "well-rated" and "well-run" bank holding companies to obtain System approval to make nonbanking acquisitions that fall within the size limit noted above and to engage de novo in permissible nonbanking activities. The Board also proposes to reorganize the list of permissible nonbanking activities into fourteen categories of functionally related activities. This reorganization should make the list easier to understand and make it easier for bank holding companies to obtain approval to engage in related activities. For example, the proposed revisions would permit a bank holding company to obtain approval at one time to engage in all of the activities on the laundry list or all activities listed in a functional category, or, at the holding company's choosing, to obtain approval to engage in any specific activity within a category.

As part of the reorganization of the laundry list, the proposal amends the list to include nonbanking activities that previously have been determined by order to be closely related to banking. Among the activities that would be included are: (1) riskless principal transactions; (2) private placement services; (3) foreign exchange trading for a bank holding company's own account; (4) dealing and related activities in gold, silver, platinum and palladium; (5) employee benefits consulting; (6) career counseling services; (7) asset management, servicing and collection activities; (8) acquiring and resolving debt-in-default; (9) printing and selling checks; and (10) providing real-estate settlement services.

The Board also proposes to broaden the scope of permissible derivatives and foreign exchange activities to assure that bank holding companies may conduct these activities to the same degree as banks, and to remove several restrictions on these activities that apply to bank holding companies but do not apply to banks that conduct these activities. In addition, the proposal eliminates restrictions on a number of activities that

no longer appear to be warranted or that have been superseded.[6/] In particular, the proposal revises and updates the description of derivatives activities and foreign exchange activities to reflect recent Board decisions, and eliminates any requirement that the Board specifically review and approve new derivatives instruments or trading on new exchanges.

2. Mechanism for Authorizing New Activities

The proposal would add two provisions to Regulation Y to ease the burden associated with the authorization of new activities. First, the proposed regulation would specifically reflect the fact that the Board may, on its own initiative, begin a proceeding to find that an activity is permissible for bank holding companies, as the Board did in the case of many of the earlier nonbanking activities and as it is proposing in the management consulting, data processing and other areas as part of this proposal. The Board could amend the laundry list, for example, as new activities are authorized for banks, as experience with a narrowly defined activity indicates that bank holding companies should be permitted to engage in a more broadly defined activity, or as developments occur in technology or the marketplace for financial products and services. As part of this proposal, the System would actively track market developments as well as decisions that authorize banks to conduct new activities and evaluate adding these activities to the laundry list even if an individual request has not yet been made to engage in these activities.

Second, the Board proposes to amend the regulation to establish a streamlined procedure outside the application process through which a bank holding company may request an advisory opinion from the Board that a particular variation on an activity is permissible under an existing authorization and is not deemed to be a new activity. This procedure would be particularly helpful in areas such as data processing, investment advisory, derivatives and foreign exchange activities where some bank holding companies have questioned whether the general authorization granted by the Board to conduct these activities permits the bank holding company to conduct variations that develop in response to market changes after the original authorization granted by the Board.

[6/] For example, many of the current restrictions that treat private placement activities as impermissible underwriting activities would be eliminated. The Board recently eliminated these restrictions as they applied to riskless principal transactions. Restrictions designed to distinguish riskless principal and private placement activities from securities underwriting activities would be retained.

These two procedures, when combined with the proposals to broaden several of the definitions of permissible nonbanking activities, should make it easier for bank holding companies to participate in marketplace developments in permissible nonbanking activities and in new activities. For example, because most permissible nonbanking activities have been broadly defined, a bank holding company would not be required to seek additional Board approval to participate in market developments in permissible activities. As noted above, if a bank holding company is uncertain about the permissibility of a development, an expedited procedure outside the approval process is available to obtain Board guidance on the scope of the authorized activity. All bank holding companies would then be able to act on the basis of that guidance without additional approval. This procedure will eliminate a number of applications that are currently filed by bank holding companies that are uncertain about the scope of permissible activities.

As previously noted, the draft proposal would also establish a procedure that would allow bank holding companies and others to seek a Board determination, outside of the applications process, that a given new activity is permissible. The Board could then add this activity to the new functional categories or establish a new category, as appropriate. At the time the Board reviews this new activity, the Board would determine whether it is appropriate to permit bank holding companies to engage in this activity without additional approval (as, for example, a variation of one or more previously authorized activities) or to require bank holding companies to obtain approval prior to conducting the activity (because, for example, the activity does not fall within a previously approved activity or category). The Board has in the past followed these approaches at various times.

3. Nonbanking Activities that are Incidental to a Permissible Activity

The Board proposes to expand its interpretation governing the scope of activities that are incidental to a permissible nonbanking activity. For example, the Board has permitted bank holding companies that conduct permissible data processing activities to use excess hardware capacity to conduct data processing involving nonfinancial data where the hardware has not been purchased solely to create excess capacity and the holding company does not provide software to process the nonfinancial data (other than making system software available). The Board also permits bank holding companies to sell general purpose data processing hardware where the hardware represents less than 30 percent of the total cost of the data processing services provided by the bank holding company. In addition, the Board permits companies engaged in securities underwriting activities to provide certain incidental services so long as the

revenue from those services is counted as ineligible revenue for purposes of applying the Board's section 20 revenue test.

Over the past year, several industry members have recommended that the Board broaden this interpretation to permit bank holding companies greater flexibility in conducting data processing and management consulting activities. In particular, these members have recommended that the Board permit a bank holding company, as an incidental activity to the holding company's permissible financial data processing and management consulting activities, to receive a modest amount of revenue from providing nonfinancial data processing services and from providing management consulting services to nonbanking companies.

Bank holding companies argue that they are at a competitive disadvantage in providing data processing and management consulting services because of the strict limitations tying these services to financial data and financial consulting. Bank holding companies also claim that these limitations disadvantage bank holding companies in hiring the most competent employees, who often have interests and skills beyond financial areas.

The Board proposes to amend Regulation Y to permit bank holding companies engaged in data processing and management consulting activities, as an incidental activity, to derive up to 30 percent of their annual revenue from nonfinancial data processing or consulting services. This 30-percent level is based on the amount of general purpose hardware that a bank holding company is already permitted to provide in connection with permissible data processing activities.

4. Removal of Restrictions Governing Permissible Activities

As noted above, the proposal would remove restrictions currently contained in the regulation that are outmoded, have been superseded by Board order or do not apply to insured depository institutions that conduct the same activity. A detailed discussion of the restrictions that are proposed to be removed is contained in section E below.

In summary, restrictions in the current regulation on the conduct of individual activities, such as restrictions governing disclosures to customers, requiring compliance with anti-tying rules, limiting disclosure of customer information, and requiring divestiture of property within specific periods of time, have been deleted from the regulation with the expectation that existing and future Board policies and guidance would more fully address the manner in which individual activities should be conducted. This approach permits greater flexibility in developing and changing the guidance for individual activities in order to adapt to changes and developments in the marketplace.

Supervisory statements also permit the opportunity for uniform interagency guidance, where such an approach is appropriate.

5. Elimination of Time Limit on System Approvals for Nonbanking Acquisitions

The proposed draft takes several other steps to ease the burden on bank holding companies that seek approval to engage in permissible activities. Currently, a bank holding company that seeks approval to engage in a nonbanking activity must commence the activity within one year of receiving System approval or the approval lapses. This requirement is not legally required and elimination of this requirement would allow a bank holding company to seek a single approval to engage de novo in all permissible nonbanking activities, thereby greatly reducing the filing burden on bank holding companies.

This change would significantly reduce burden by eliminating the filing of multiple applications to engage in permissible nonbanking activities and by permitting bank holding companies quickly to respond to a decision to compete in a permissible nonbanking activity. Moreover, this change would focus the filing requirement on acquisitions of nonbanking companies, which are the types of proposals that have the most significant effects on most organizations.

The Board originally imposed the time limit on its approvals in order to address concern that the financial and other resources of a bank holding company could change between the time that the System approved a proposal and commencement of the activity by the holding company. This concern would appear to be minimal in the case of proposals by a bank holding company to engage de novo in a permissible activity. To address this concern, the proposed revision would provide that an approval to engage de novo in an activity would not expire so long as the bank holding company continues to have adequate capital and at least satisfactory composite and management examination ratings.

6. Revision of Policy Statement Governing Investment Advisory Activities

In 1972, the Board permitted bank holding companies to provide investment advice to mutual funds and other investment companies. In connection with that determination, the Board adopted a policy statement outlining a number of restrictions that the Board believed were necessary to address the potential that the investment advisory activities of bank holding companies may result in the "subtle hazards" that the Glass-Steagall Act was designed to prevent. In 1992, the Board substantially revised the policy statement to remove many of the restrictions on investment advisory activities to conform with various court decisions and developments in the market that had occurred since

the policy statement was adopted. On August 23, 1996, the Board also amended this policy statement to allow a bank holding company to purchase, as fiduciary, shares of a mutual fund advised by the holding company where the purchase of shares is permitted by the fiduciary agreement, relevant state law or court order. In addition, the Board rescinded a letter issued in 1986 (the "Sovran letter") that governs the manner in which a bank holding company may act as broker in the sale of mutual fund shares to bank customers.

The Board proposes to remove four restrictions that remain in the policy statement. These restrictions are:

- A prohibition on a bank holding company owning any shares of a mutual fund advised by the bank holding company;

- A prohibition on a bank holding company lending to a mutual fund advised by the bank holding company;

- A prohibition on a bank holding company accepting shares of a mutual fund that it advises as collateral for any loan to a customer that is for the purpose of purchasing such mutual fund shares; and

- A prohibition on a bank holding company serving as an investment adviser to an investment company or mutual fund that has a name that is similar to, or a variation of, the name of the bank holding company or any of its subsidiary banks.

None of these four restrictions is specifically required by the Glass-Steagall Act. The first restriction was intended to assure that a bank holding company does not, in violation of the Glass-Steagall Act, control a mutual fund that it advises. Removal of this prohibition would allow a bank holding company to acquire up to 5 percent of the shares of a mutual fund, which is the limit contained in the BHC Act for investments by bank holding companies in the voting shares of any company. This modest investment amount would not appear to enhance significantly the ability of a bank holding company to control a mutual fund it advises. The federal securities laws require, for example, that the board of directors of a mutual fund maintain at least a majority of directors that are independent of the investment adviser, and it is these directors that must review and approve the continued service of the investment adviser.

The second limitation governs loans by a bank holding company to an investment company advised by the bank holding company. In 1982, section 23A of the Federal Reserve Act, which establishes quantitative and qualitative limitations on the lending activities of banks, was amended to cover these types of

lending transactions by banks. Section 23A would permit a bank to lend to a mutual fund advised by the bank or an affiliate within the overall limits that apply to loans by banks to affiliates. In light of section 23A, a complete prohibition on these lending activities by a bank holding company--which does not lend insured funds--does not appear necessary and the Board proposes to remove this restriction.

The third limitation prohibits a bank holding company from accepting as collateral for a loan shares of an investment company that the holding company advises where the purpose of the loan is to purchase the investment company shares. Section 23A limits the ability of banks to accept these shares as collateral for a loan from the bank. This restriction in section 23A was intended to address potential safety and soundness concerns that could result from allowing an insured institution to accept shares of a related mutual fund as collateral for a loan. A bank holding company, on the other hand, does not lend insured funds. Moreover, the collateral and other requirements in section 23A do not apply to loans by bank holding companies. Accordingly, the Board seeks public comment on permitting bank holding companies and their nonbanking affiliates to extend credit that is collateralized by shares of investment companies that the bank holding company advises.

The fourth restriction raises an issue regarding the potential for customer confusion about whether shares of investment companies are federally insured. The Board's rule prohibits bank holding company from having a name that is "similar to, or a variation of" a mutual fund or investment company advised by the holding company or any of its subsidiary banks. This rule is stricter than the rule adopted by the Comptroller of the Currency for national banks, which permits a national bank to advise an investment company with a name that is similar to the name of the bank provided that the name is not identical to the bank's name. The Board's rule is also stricter than the position of the SEC, which permits an investment company to have a name similar to that of an insured depository institution provided that the investment company makes a number of disclosures that advise customers that the investment company is not federally insured or guaranteed by the insured depository institution.[7/]

The Board seeks comment on amending its rule to permit similar names so long as: 1) the investment company name is not identical to that of the holding company or an affiliated insured depository institution, 2) the investment company name does not include the term bank, and 3) the holding company or investment

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[7/] Letter of May 13, 1993, [1993 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 76,683.

company discloses to customers in writing that shares of the investment company are not federally insured and are not obligations of or guaranteed by any insured depository institution, and the role of the bank holding company as an adviser to the investment company. The Board seeks comment on whether these limitations would adequately address the potential for customer confusion that shares of an investment company advised by a bank holding company are not federally insured.

7. Revision to Exception for Acquisitions of Lending Assets in the Ordinary Course of Business

The Board also proposes to update the regulatory language permitting a bank holding company, without additional approval, to acquire lending assets from a third party in the ordinary course of business. The Board currently permits a bank holding company, without additional approval, to acquire assets of an office of another company related to making, acquiring or servicing loans so long as the bank holding company and the transaction meet certain qualifications. Among the qualifications are that the assets relate to consumer or mortgage lending, and that the acquired assets represent the lesser of $25 million or 25 percent of the consumer lending, mortgage banking or industrial banking assets of the acquiring bank holding company. The office must also be located in the geographic area served by the bank holding company.

The Board proposes to revise this provision in three ways. First, since the Board no longer limits the geographic scope of its approval to engage in nonbanking activities, this restriction would be removed. Second, the scope of the exception would be broadened from consumer and mortgage banking assets to permit the acquisition of assets related to any lending activity. Third, the threshold limits would be raised to permit the acquisition of assets representing up to the lesser of $100 million or 50 percent of the lending assets of the bank holding company.

The Board invites public comment on these revisions.

E. Explanation of the restrictions removed from permissible nonbanking activities.

As noted above, the Board proposes to remove restrictions contained in the current regulation that are outmoded, have been superseded by Board order or would not apply to an insured depository institution conducting the same activity. The limitations that remain are necessary to establish a definition of the permitted activity or to prevent circumvention of another statute, such as the Glass-Steagall Act. The following discussion explains, by functional group of

activities, the restrictions that the Board proposes to eliminate as well as, the limitations that the Board proposes to retain.

The Board seeks comment on all aspects of its proposed changes to the Regulation Y laundry list. In particular, comment is invited on whether the activities are properly defined and whether, as defined, each activity is closely related to banking for purposes of section 4(c)(8) of the BHC Act. Comment is also invited on new activities that the Board should consider including on the regulatory laundry list. Comments regarding new activities should explain the basis for finding that the activity is closely related to banking for purposes of the BHC Act.

The Board invites comment on whether the restrictions on nonbanking activities that are proposed to be retained are adequate to address potential adverse effects from the conduct of the relevant activity, including potential conflicts of interests and customer confusion. In addition, the Board seeks comment on whether supervisory policy statements are adequate for addressing potential adverse effects that may be associated with certain activities, and the type of guidance that should be provided in such a policy statement.

1. Extending credit and servicing loans

Lending activities are already broadly defined and contain no restrictions.

2. Activities related to extending credit

A new category has been added authorizing activities that the Board determines to be usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit. Without limiting the scope of this activity, the category lists a number of activities that the Board has previously determined are related to credit extending activities, including, by way of example, credit bureau, collection agency, appraisal, asset management, check guarantee, and real-estate settlement activities. Restrictions governing disclosures, tying, preferential treatment of customers of affiliates, disclosure of confidential customer information without customer consent and similar restrictions have been removed from these activities. These restrictions do not apply to banks that conduct these activities and, to the extent these restrictions are appropriate, supervisory guidance on the conduct of the activity would be developed.

3. Leasing personal or real property

The leasing provision of the regulation was streamlined by combining the two types of leasing activities permissible for

bank holding companies: full-payout leasing and high residual value leasing.[8/] The following restrictions have been removed--

- The lease must serve as the functional equivalent of an extension of credit (permissible high residual value leasing may not be the functional equivalent of an extension of credit);

- The property must be acquired only for a specific leasing transaction;

- Leased property must be re-leased or sold within 2 years of the end of each lease;

- The maximum lease term may not exceed 40 years; and

- No leased property may be held for more than 50 years.

These restrictions were removed from the regulation primarily to permit bank holding companies greater flexibility to acquire property in quantity in the expectation of leasing activities and to grant more flexibility in selling or re-leasing property at the expiration of a lease. It is expected that supervisory guidance would be developed to aid examiners in supervising the acquisition and retention of property for leasing.

The draft also removes the provision limiting to 100 percent of the initial acquisition cost the amount of reliance that may be placed on the residual value of leased personal property. No such limit applies to national bank leasing activities. The estimated residual value of real property continues to be limited to 25 percent of the value of the property at the time of the initial lease. This restriction is

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[8/] A full-payout lease is the functional equivalent of an extension of credit and relies primarily on rental payments and tax benefits to recover the cost of the leased property and related financing costs. High residual value leasing may involve significant reliance on the expected residual value of the leased property--on average, under 50 percent, but in some cases, up to the full original cost of leased property--to recoup the cost of the leased property and related financing costs. Under the Board's regulation, bank holding companies may provide full-payout leases for any type of personal property or real property, and may make high residual value leases only for personal property. Bank holding companies have not been permitted to engage in high residual value leasing for real property because of concern that such leasing would be indistinguishable from real estate development and investment activities.

intended to distinguish real property leasing from real estate development and investment activities.

Two other requirements were retained: 1) that the lease be non-operating, and 2) that the initial lease term be at least 90 days. These requirements were developed in the course of litigation regarding the leasing activities of national banks, and were relied on by the courts in distinguishing bank leasing activities from general property rental and real estate development businesses. The requirement that a lease be non-operating is also a statutory requirement limiting the high residual value leasing activities of national banks.[9/] In particular, the definition of nonoperating leases in the automobile rental context, which was developed in litigation and prevents a bank holding company from directly providing repair and similar services, has been retained. The draft would permit a bank holding company to arrange for a third party to provide repair and other services in connection with a lease.

4. Operating nonbank depository institutions

This category permits ownership of a savings association and an industrial loan company. The proposed regulation retains the restrictions in the BHC Act that the institution not be operated as a "bank" for purposes of the BHC Act[10/] and that the activities of the institution conform to the relevant statutory provisions of the BHC Act.

5. Trust company functions

The current regulation limits the deposit-taking and lending activities of trust companies. These limitations are already encompassed in the requirement in the BHC Act that the trust company not be a "bank" for purposes of the BHC Act, and have, therefore, been deleted from the regulation.

6. Financial and investment advisory activities

The regulation has been reorganized to group together all investment and financial advisory activities. The proposed

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[9/] As a general matter, the requirement that a lease be non-operating means that the bank holding company does not itself operate the equipment or property being leased or repair or service the property. This limitation was intended to help distinguish bank leasing activities from general commercial activities.

[10/] The BHC Act contains an exception from the definition of "bank" for industrial loan companies and savings associations that meet requirements listed in the BHC Act.

rule broadly authorizes acting as investment or financial adviser to any person, without restriction. The proposed definition of investment and financial advisory activities is very broad and would permit some types of advisory activities beyond the scope of advisory activities currently permitted by regulation. The Board invites comment on whether this activity has been properly defined and whether all investment and financial advisory activities are closely related to banking.

Without limiting the breadth of the advisory authority, the rule also lists as specific examples of permissible advisory activities certain types of investment or financial advice, counseling and related services that previously had been separately authorized. These examples are--

- Advising an investment company and sponsoring, organizing and managing a closed-end investment company;

- Furnishing general economic information and forecasts;

- Providing financial advice regarding mergers and similar corporate transactions;

- Providing consumer educational courses and providing tax-planning and tax-preparation; and

- Providing advice regarding derivatives transactions.

The few restrictions imposed by the Board on these activities would be removed. Specifically, the Board proposes to remove the current restriction that discretionary investment advice be provided only to institutional customers, thereby allowing bank holding companies to manage retail customer accounts outside of the trust department of an affiliated bank. This activity would continue to be governed by the fiduciary principles in relevant state law. Similarly, the requirement that investment advice regarding derivatives transactions be provided only to institutional investors would be removed, thereby allowing this advice to be provided to retail customers. These restrictions do not apply to banks that provide investment advisory services.

Restrictions also have been deleted in the areas of tax-planning and preparation services and consumer counseling services that prohibited bank holding companies from promoting specific products and services and from obtaining or disclosing confidential customer information without the customer's consent. These restrictions do not apply to banks that engage in these activities.

7. Agency transactional services for customer investments

The various transactional services that a bank holding company may provide as agent have been reorganized into a single functional category. This category includes securities brokerage activities, private placement activities, riskless principal activities, execution and clearance of derivatives contracts, foreign exchange execution services and other transactional services.

i. Securities brokerage activities

The current regulation differentiates between securities brokerage services provided alone (i.e., discount brokerage services) and securities brokerage services provided in combination with investment advisory services (i.e., full-service brokerage activities). The proposed rule would authorize securities brokerage without distinguishing between discount and full-service brokerage activities.

Under the current regulation, bank holding companies providing full-service brokerage services must make certain disclosures to customers regarding the uninsured nature of securities and may not disclose confidential customer information without the customer's consent. These requirements have been deleted. The disclosure requirements--along with a number of other requirements that specifically address the potential for customer confusion, training requirements, suitability requirements and other matters--are already contained in an interagency policy statement that governs the sale of securities and other non-deposit investment products on bank premises as well as in rules adopted by the SEC. In addition, similar disclosure requirements are required by the Board's policy statement governing the sale by bank holding companies of shares of mutual funds and other investment companies that the bank holding company advises. To the extent that disclosures to customers are appropriate in areas not covered by these policy statements, it is expected that the Board would develop supervisory guidance, on an interagency basis where appropriate.

The Board seeks comment on whether elimination of these restrictions from the regulation would lead to adverse effects, including customer confusion about the uninsured nature of non-deposit investment products sold through bank holding companies.

ii. Riskless principal activities

The Board recently reduced the restrictions that govern riskless principal activities. The restrictions that were retained were designed to ensure that bank holding companies does not avoid the Glass-Steagall Act provisions by classifying underwriting and dealing activities as riskless principal activities. The provisions that are proposed to be retained prohibit:

• Selling bank-ineligible securities at the order of a customer who is the issuer or in a transaction in which the bank holding company has an agreement to place the securities of the issuer;

• Acting as riskless principal in any transaction involving a bank-ineligible security for which the bank holding company or an affiliate makes a market;

• Acting as riskless principal for any bank-ineligible security carried in the inventory of the bank holding company or any affiliate; and

• Acting as riskless principal on behalf of any U.S. affiliate that engages in bank-ineligible securities underwriting or dealing activities or any foreign affiliate that engages in securities underwriting or dealing activities outside the U.S.

The proposed regulation retains these four restrictions. The Board requests comment on whether these restrictions, and in particular the second and third restrictions, are necessary to assure compliance with the Glass-Steagall Act.

iii. Private placement activities

In adding private placement activities to the laundry list, the regulation adopts the definition of private placement activities used by the SEC and the federal securities laws. All but one restriction that had been imposed by Board order on the conduct of this activity would be removed. That restriction prohibits a bank holding company from purchasing for its own account securities that it is placing and from holding in inventory unsold portions of securities it is attempting to place. This restriction prevents a bank holding company from classifying its securities underwriting activities, which are governed by the Glass-Steagall Act and the Board's section 20 decisions, as private placement activities.

Among the restrictions that would be removed from the conduct of private placement activities are prohibitions on:

• Extending credit that enhances the marketability of a security being placed;

• Lending to an issuer for the purpose of covering the funding lost through the unsold portion of securities being placed;

• Lending to the issuer for the purpose of repurchasing securities being placed;

• Acquiring securities through an account for which the bank holding company has fiduciary authority;

• Providing advice to any purchaser regarding a security the bank holding company is placing; and

• Placing securities with any non-institutional investors (the SEC rules allow sales to institutional investors and up to 35 non-institutional investors).

None of these restrictions have been applied to national banks that conduct private placement activities. The Board seeks comment on whether any of these restrictions must be retained to address potential adverse effects, including potential conflicts of interest or customer confusion, or to assure fulfillment of fiduciary duties.

iv. Futures commission merchant activities

a. In general

The current regulation authorizes bank holding companies to execute and clear derivatives on certain financial instruments on major exchanges, subject to a number of restrictions.

The Board has, by order, broadened this authority in two key respects. First, the Board has by order permitted bank holding companies to execute and clear derivative contracts on a broad range of nonfinancial commodities. Second, the Board has permitted bank holding companies to clear derivative contracts without simultaneously providing execution services. The proposed regulation has been amended to incorporate these actions.

The proposal also deletes the restriction that a bank holding company not act as a futures commission merchant (FCM) on any exchange unless the rules of the exchange have been reviewed by the Board. All U.S. commodities exchanges are supervised by the CFTC. A review by the Federal Reserve System of the rules of an exchange, whether domestic or foreign, does not provide a reliable guide regarding the risk management systems of the exchange or the safety of conducting FCM activities on the exchange. A more effective method for addressing the risks of FCM activities--whether on domestic or foreign exchanges--is through the on-site inspection and supervision of the risk management systems of the bank holding company.

The proposed rule removes several other requirements, including that the FCM subsidiary--

• Time stamp all orders and execute them in chronological order;

• Not trade for its own account;

• Not extend margin credit to customers; and

• Maintain adequate capital.

As noted above, the Board is proposing to remove restrictions on subsidiary FCM trading for its own account, and conduct in the other areas listed above is addressed in rules of the CFTC or the relevant self-regulatory organization.

The proposed rule retains the requirements of the current regulation that a bank holding company conduct its FCM activities through a separately incorporated subsidiary (i.e., not through the parent bank holding company) and that the subsidiary not become a member of an exchange that requires the parent bank holding company also to become a member of the exchange. The purpose of this restriction is to limit the bank holding company's exposure to contingent obligations under the loss sharing rules of exchange clearing houses in order to preserve the holding company's ability to serve as a source of strength to its subsidiary insured depository institutions.

The Board invites comment on all aspects of its proposed revision to FCM activities. In particular, the Board invites comment on whether the requirement limiting the parent bank holding company from becoming a member of an exchange is appropriate and on whether the Board's concern could be addressed more effectively by an alternative restriction, such as a requirement that the parent bank holding company not provide a guarantee of non-proprietary trades conducted by an FCM subsidiary. A restriction on the holding company providing such a guarantee has been imposed on bank holding companies through examination guidance and various Board orders to assure that the capital of the holding company is available to support the insured depository institution subsidiaries of the holding company.

b. Proposed change in Board precedent regarding clearing-only activities

The Board has by order permitted bank holding companies to clear trades that the FCM has not executed itself. The proposed rule incorporates this activity in the laundry list, retaining two restrictions currently imposed by Board order. The first restriction prohibits the clearing subsidiary from serving as the primary or qualifying clearing firm for a customer. The second restriction is that the clearing subsidiary have a

contractual right to decline to clear any trade that the subsidiary believes poses unacceptable risks.

These requirements were adopted to ensure that the clearing subsidiary of a bank holding company could limit its exposure to traders that execute trades themselves or through third parties. In particular, these requirements prevent a bank holding company from clearing trades executed by exchange locals or market makers. In 1991, the Board rejected a proposal by a bank holding company to engage in clearing trades for exchange locals and market makers because of concerns about the inability of the bank holding company to monitor and control its credit exposures during the trading day.[11/] The Board found that the activity was closely related to banking, but believed that the potential adverse effects of conducting the activity outweighed the potential public benefits.

The Board seeks comment on whether these two restrictions on the conduct of clearing-only activities by bank holding companies should be retained or whether bank holding companies, as part of permissible FCM activities, should be permitted to engage in clearing without executing trades, including clearing trades for professional traders. In particular, the Board invites comment on whether and how bank holding companies are able to monitor and limit adequately the potential exposure from conducting this activity.

v. Other transactional services

In addition to the transactional services described above, the proposed rule adds a provision allowing a bank holding company to provide transactional services for customers involving any derivative or foreign exchange transaction that a bank holding company is permitted to conduct for its own account.

The proposed rule also removes the restriction in the current regulation prohibiting a bank holding company from providing foreign exchange transactional services in the same subsidiary that provides advice regarding foreign exchange. Banks are not subject to this restriction. With this change, a bank holding company would be permitted to provide any transactional service to any customer in combination with a related advisory service, and may provide any advisory and transactional services as agent to both retail and institutional customers.

8. Investment transactions as principal

[11/] Stichting Prioriteit ABN AMRO Holding, 77 Federal Reserve Bulletin 189 (January 9, 1991).

The proposal incorporates decisions by the Board that permit bank holding companies broadly to invest for the holding company's own account as principal in derivatives on financial and nonfinancial commodities. The proposal would allow a bank holding company to trade as principal for its own account any derivative contract on a financial or nonfinancial commodity or index of commodities, so long as any one of three conditions is met:

- The underlying asset is a permissible investment for State member banks;

- The derivative contract requires cash settlement; or

- The derivative contract allows for assignment, termination or offset prior to expiration and the bank holding company makes every reasonable effort to avoid delivery.

The proposal also includes authority that the Board has previously granted by order permitting bank holding companies to buy, sell and store gold, silver, platinum and palladium bullion, coins, bars and rounds. The regulation retains the current authority to trade in foreign exchange and bank-eligible securities. The proposal does not expand the current authority of bank holding companies to acquire as principal securities or physical commodities that a bank is not currently permitted to own for its own account.

In several areas, such as foreign exchange trading and certain derivatives trading, the Board has prohibited bank holding companies from engaging in the same subsidiary in trading activities as principal and providing advice to customers. This restriction does not apply to banks that conduct the same activities and has been removed. It is expected that supervisory guidance would be developed to address potential conflicts of interest that may arise in this area.

9. Management consulting and counseling activities

The current regulation authorizes bank holding companies to provide management consulting services on any matter to any depository institution or affiliate of a depository institution. The rule has been expanded in two respects.

First, bank holding companies would be authorized to provide management consulting services regarding financial, economic, accounting or audit matters to any company. These activities are directly related to the activities and expertise of bank holding companies. The Board invites comment on whether this activity is closely related to banking for purposes of section 4(c)(8) of the BHC Act.

Second, a bank holding company would be permitted to derive up to 30 percent of its management consulting revenue from management consulting services provided to any customer on any matter.

Two restrictions have been retained--governing interlocks with and investments in client companies--to ensure that a bank holding company does not exercise control over a client company through a management consulting contract.

10. Support services

This category includes courier services (other than armored car services) and printing checks and related documents. Both services are included in the laundry list as they were authorized by the Board, without change.

11. Insurance agency and underwriting activities

The insurance provisions reflect the detailed restrictions on insurance activities of bank holding companies specified in the BHC Act. The current regulation has not been changed.

12. Community development activities

The current regulation permits bank holding companies to make equity and debt investments in corporations and projects designed primarily to promote community welfare. The proposal amends the description of this activity to clarify that this activity includes providing advisory and related services to community development programs. The Board has permitted these advisory services by order.

13. Money orders, savings bonds and traveler's checks

The current regulation limits the sale and issuance of money orders and similar consumer payment instruments to instruments with a face value of less than $1,000. The Board has by order authorized this activity for payment instruments of any face amount. Accordingly, the limitation on the face amount of these instruments has been removed.

14. Data processing activities

The current regulation broadly authorizes bank holding companies to provide data processing and data transmission services by any technological means so long as the data processed or furnished are financial, banking or economic. The proposed rule clarifies that a bank holding company may render advice to anyone on processing and transmitting banking, financial and economic data.

The following two restrictions on permissible data processing activities have been deleted:

- All data processing services must be provided pursuant to a written agreement with the third party that describes and limits the services; and

- Data processing facilities must be designed, marketed and operated for processing and transmitting financial, banking or economic data.

The data processing activity has also been revised to permit bank holding companies to derive up to 30 percent of their data processing revenues from processing and transmitting data that are not financial, banking or economic.

F. Explanation of changes to tying rules.

The Board is proposing amendments to its rules regarding tying arrangements. The amendments would allow bank holding companies significantly greater flexibility to package their products, and thereby provide more efficient and lower cost service to their consumers.

Tying arrangements, where a customer's ability to purchase or receive a discount on one product is tied to the customer's purchase of another product, are prohibited by section 106 of the Bank Holding Company Act Amendments of 1970. 12 U.S.C. § 1972. Although section 106 applies only when a bank offers the tying product, the Board in 1971 extended its special restrictions to bank holding companies and their nonbank subsidiaries. 36 FR 10,777 (June 3, 1971).

The Board has authority to grant exceptions to section 106 and, in the past few years, has used its exemptive authority to allow banks to offer products to their customers more efficiently and at lower cost, without risk of anti-competitive effects. For example, the Board has allowed arrangements that included discounts on brokerage services and other products based on a customer's relationship with the bank or bank holding company. The proposed amendments set forth below would build on this recent history in attempting to identify broader categories of packaging arrangements that do not raise the concerns that section 106 was intended to address and should therefore be permitted.

Section 106 contains five restrictions intended to prohibit anti-competitive behavior by banks: two prohibit tying arrangements; two prohibit reciprocity arrangements; and one prohibits exclusive dealing arrangements. The tying restrictions, which have the greatest effect on industry practices, prohibit a bank from restricting the availability or

varying the consideration for one product or service (the "tying" product) on the condition that a customer purchase another product or service offered by the bank or by any of its affiliates (the "tied" product).[12/]

Section 106 is a broader prohibition than those contained in the antitrust laws because, unlike the antitrust laws, a plaintiff in action under section 106 need not show that: (1) the seller has market power in the market for the tying product; (2) the tying arrangement has had an anti-competitive effect in the market for the tied product; or (3) the tying arrangement has had a substantial effect on interstate commerce. The broader reach of section 106 is most evident in that it prohibits a bank from varying the consideration for one of its products--that is, offering a discount on one of its products--for customers who purchase a second product from the bank or its affiliates. Such an arrangement generally would not be prohibited by the antitrust laws.

Section 106 was adopted in 1970 when Congress expanded the authority of the Board to approve bank holding companies to engage in nonbanking activities. Section 106 was based on Congressional concern that banks' unique role in the economy, in particular their power to extend credit, would allow them to gain a competitive advantage in the new, nonbanking markets that their affiliates were being allowed to enter. See S. Rep. No. 1084, 91st Cong., 2d Sess. (1970). Congress therefore imposed special limitations on tying by banks--restrictions beyond those imposed by the antitrust laws.

1. Rescind the Board's Regulatory Extension of the Statute

As noted above, the Board has by regulation extended the restrictions of section 106 to bank holding companies and their nonbank subsidiaries as if they were banks. This extension was adopted at the same time that the Board approved by regulation the first "laundry list" of nonbanking activities under section 4(c)(8) of the BHC Act, apparently as a prophylactic measure addressed at potential anti-competitive practices by companies engaging in nonbanking activities.

[12/] Violations of section 106 may be redressed through: (1) an enforcement action for civil money penalties brought by the appropriate Federal banking agency, (2) an action for injunctive relief brought by the Justice Department or any person who can show "danger of irreparable loss or damage," or (3) a civil suit brought by "any person who is injured in his business or property" by the prohibited arrangement, with the court directed to award treble damages and attorneys fees if the plaintiff prevails. See 12 U.S.C. 1972(2)(F), 1973, 1975.

In the past 25 years, the Board has gained extensive experience with nonbank affiliates of bank holding companies and the markets in which they operate. Based on this experience, the Board does not believe that these nonbank companies possess the market power over credit or other unique competitive advantages that Congress was concerned that banks enjoyed in 1970. Bank holding companies may never have possessed such market power but, even if they once did, financial services markets have generally become much more competitive over time. Accordingly, the Board believes that applying the special bank anti-tying rules to such companies is no longer justified. Any competitive problems that might arise would be isolated cases, better addressed not through a special blanket prohibition but rather through the same general antitrust laws that bind their nonbank competitors.

In recognition of these facts, the Board has over the past several years relaxed the anti-tying restrictions on nonbanks within bank holding companies. In addition to adopting various exceptions that applied both to banks and nonbanks, the Board in 1994 permitted a bank holding company or its nonbank subsidiary to offer a discount on any of its products or services on the condition that a customer obtain any other product or service from that company or from any of its nonbank affiliates--that is, permitted discount arrangements that did not involve a bank. 12 CFR 225.7(b)(3). However, even with this exception, tying between a bank holding company or its nonbank subsidiary and an affiliated bank is still restricted, as is any inter-affiliate tying arrangement that does not involve the offering of a discount.

The Board proposes to rescind its regulatory extension of the anti-tying rules to nonbanks. The Board notes that in doing so it would not be granting an "exception" to section 106--as section 106 never envisioned that non-banks would be covered in the first place. Rather, the Board would be lifting a restriction that it itself imposed, and one which it believes should be maintained only if there is clear evidence of its necessity.

Removal of these special restrictions on bank holding companies and their nonbank subsidiaries would eliminate a competitive disadvantage by allowing them the same freedom to package products that their competitors currently enjoy. The Sherman Act would continue to prohibit bank holding companies and their subsidiaries from engaging in any tying arrangement that had an anti-competitive effect. 15 U.S.C. § 1. Furthermore, section 106 would continue to prohibit a bank from tying one of its products to a product offered by one of its affiliates, bank or nonbank.

The Board is seeking comment, however, on whether it should retain its regulatory extension of the statute for

purposes of one type of tying arrangement. Section 825(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, signed into law on August 22, 1996, amended the Food Stamp Act of 1997 to prohibit tying the availability of electronic benefit transfer services to other point-of-sale services. Enforcement of the Act is assigned to the Secretary of Agriculture. 104 Pub. L. 193, 110 Stat. 2105; 7 U.S.C. § 2016(i)(11). Banks, bank holding companies, and nonbank subsidiaries of bank holding companies were exempted from the statute, apparently because they were already restricted by section 106 (in the case of banks) and the Board's regulation (in the case of bank holding companies and their nonbank subsidiaries). Thus, unless the Board were to retain a restriction on bank holding companies and their nonbank subsidiaries, they would be the only companies not subject to a special restriction on tying of electronic benefit transfer services.

2. Treat Inter-Affiliate Tying Arrangements the Same as Intra-Bank Arrangements

The Board is also proposing to broaden a statutory exception designed to preserve traditional banking relationships. The statutory exception is limited to traditional banking relationships within one bank, and the proposed regulatory exception would extend the statutory exception to apply to relationships that involve more than one bank or other affiliate.

Section 106 contains an explicit exception (the "statutory traditional bank product exception") that permits a bank to tie any product or service to a loan, discount, deposit, or trust service offered by that bank. 12 U.S.C. § 1972(1)(A). For example, a bank could condition the use of its messenger service on a customer's maintaining a deposit account at the bank. Although the statutory traditional bank product exception appears to have been effective in preserving traditional relationships between customer and bank, the exception is limited in an important way: it does not extend to transactions involving products offered by affiliates. Thus, a bank could not condition the use of its messenger service on a customer's maintaining a deposit at an affiliated bank. As another example, the Board recently granted an exemption to allow a secured credit card program where a bank required that a customer maintain a deposit at an affiliated bank. Although a bank could have offered a secured credit card program conditioned on a customer's maintaining a deposit at that same bank, the inter-affiliate arrangement was otherwise prohibited by section 106 but for the exemption.

The Board has already adopted a "regulatory traditional bank product exception" that generally extends the statutory traditional bank product exception between affiliates--for

example, allowing one bank to offer a discount on a loan based on a customer's deposit relationship with an affiliated bank. However, taking an incremental approach, the Board placed two restrictions on the regulatory exception. First, the Board required that both products involved in the tying arrangement be traditional bank products (thereby disqualifying the messenger service example above). Second, the Board required that the arrangement consist of discounting the tying product rather than restricting its availability (thereby disqualifying the secured credit card example above).

The Board believes that there remains a rationale for the latter restrictions--for example, secured credit cards aside, there are few examples where restricting the availability of one product on the purchase of another serves a valid economic purpose.[13/] Nonetheless, Congress has already decided not to apply these restrictions to the statutory traditional bank product exception for intra-bank transactions, and it is difficult to argue that inter-affiliate transactions pose any greater risk of anti-competitive behavior than intra-bank transactions. Moreover, Congress has already extended the statutory traditional bank product exception between affiliates, without restriction, for savings associations and their affiliates. 12 U.S.C. § 1464(q)(1)(A).

3. Extend the Expanded Regulatory Traditional Bank Product Exception to Reciprocity Arrangements

As noted above, section 106 prohibits not only tying arrangements (conditioning the availability of one product on the purchase of another) but also reciprocity arrangements (conditioning the availability of one product on the providing of another by the customer). 12 U.S.C. § 1972(1)(C) and (D). Like the tying prohibition, the prohibition on reciprocity arrangements contains an exception intended to preserve traditional banking relationships. The exception provides that a bank may condition the availability of a loan, discount, deposit or trust service on the customer's providing some product or service "related to, and usually provided in connection with"

[13/] The Board has recently been presented with another case where restricting the availability of a product may be justifiable. A petitioner has sought an exemption from section 106 to allow a brokerage subsidiary of a bank holding company to require a customer to maintain a deposit at an affiliated bank in order to facilitate compliance with the time-for-payment requirements of Regulation T. Even if the Board were to rescind its regulatory extension of section 106 to bank holding companies and their nonbank subsidiaries, a brokerage department of a bank would still be prohibited from imposing this requirement, absent the proposed amendment to the traditional bank product exception.

such a loan, discount, deposit or trust service. 12 U.S.C. § 1972(1)(C).

Also like the statutory traditional bank product exception to the tying prohibition, this exception to the reciprocity prohibition does not apply to inter-affiliate transactions. Although the Board has received only one request to extend the exception -- probably because this exception is confusing and rarely invoked in the case law -- the Board is proposing such an extension for comment, for the same reasons noted above.

4. Coverage of Foreign Banks under Section 106

A petitioner has sought an interpretation or exemption from the statute to clarify that section 106 does not restrict "foreign transactions." Petitioner argues that statutes are generally presumed not to have an extra-territorial reach unless specified by Congress, and that no specification was made in section 106. Petitioner notes that if section 106 did apply, U.S. firms would be at a competitive disadvantage, as there is no equivalent to section 106 in other nations.

The Board seeks comment on whether it should establish a "safe harbor" to provide certainty with respect to foreign transactions. In particular, the Board seeks comment on whether any safe harbor should define "foreign transactions" according to the location of the customer (as suggested by petitioner), the location of the market where any potential anti-competitive effects would occur (as appears to be the practice under the Sherman Act), or some other factor or factors.

G. Explanation of other proposed changes.

1. Bank Holding Company Formations

Regulation Y currently implements the provisions enacted in the Riegle Community Development Act that establish a streamlined 30-day notice procedure for proposals by existing shareholders of a bank to establish a bank holding company. To qualify for this procedure under current rules, the shareholders of the bank must acquire at least 80 percent of the shares of the new bank holding company in substantially the same proportion as the shareholders' bank ownership, must certify that the shareholders are not subject to any supervisory or administrative action, and must identify the shareholders of the new bank holding company.

The Board proposes several changes to these requirements. First, the Board proposes to reduce the percentage of the bank holding company that must be owned by shareholders of the bank from 80 to 67 percent. This level assures that the

transaction is in fact a reorganization in which the bank shareholders continue to control the new bank holding company and minimizes the likelihood that a new controlling shareholder will be introduced without adequate review.

Next, the proposal would require that only the principal shareholders (i.e., shareholders owning in excess of 10 percent of the bank holding company) certify that they are not subject to any supervisory or administrative action, rather than requiring that all shareholders make this certification. Finally, the proposal would eliminate any publication requirement for this category of bank holding company formations. The Riegle Act does not require publication of these proceedings and, because these transactions represent a corporate reorganization, little purpose is served by requiring public notice. The System would continue to consider all of the same statutory factors in reviewing these proposals, including considering the competitive effects, financial and managerial resources of the organization, effect on the convenience and needs of the community and the CRA performance record of the bank.

The Board invites comment on whether these changes are appropriate, would reduce unnecessary burden on the formation of new bank holding companies--particularly small bank holding companies--and are consistent with the provisions of the BHC Act permitting this expedited procedure.

2. Change in Bank Control Act Filings

The Board proposes to reorganize, clarify and simplify the portion of Regulation Y that implements the Change in Bank Control Act (CIBC Act). The proposal attempts to harmonize the scope and procedural requirements of the Board's regulation implementing the CIBC Act with those of the other federal banking agencies and to reduce any unnecessary regulatory burden. The proposal also incorporates various interpretations of this subpart made by the Board since the last revision of Regulation Y. These changes have been developed in consultation with the other federal banking agencies in an effort to develop a uniform regulatory approach to implementing the CIBC Act at all of the banking agencies.

Currently, the Board's rules generally require any person (other than a bank holding company) seeking to acquire shares of a state member bank or bank holding company to file a notice under the CIBC Act at two thresholds: when the person's ownership level exceeds 10 percent of the voting shares of the bank or bank holding company, and again when the ownership level exceeds 25 percent. This two-tiered approach allowed a review of the financial resources of an acquiror at two stages, with a lesser showing of financial resources required for transactions below the 25 percent threshold.

The Board proposes to reduce regulatory burden by eliminating the 25 percent threshold. This eliminates the requirement that persons who have received authorization to own in excess of 10 percent, but less than 25 percent, of the voting shares of a member bank or bank holding company file a second notice before owning 25 percent or more of the voting shares of the institution. Persons who initially acquire in excess of 25 percent of the shares of a bank or bank holding company would continue to be subject to only one review under the CIBC Act. The other federal banking agencies have already adopted this approach.

Under the proposal, persons who currently own 10 percent (but less than 25 percent) of the shares of a state member bank or bank holding company with Board approval under the CIBC Act would be exempt from further filing requirements under the CIBC Act, unless otherwise notified in writing by the System. In future cases in which a person appears to have sufficient financial resources to acquire more than 10 percent, but less than 100 percent of the shares of a bank, the System may limit the approval granted on a case-by-case basis to require further review of the financial resources of the person as appropriate.

The proposal also adds definitions of key terms to clarify the scope of the regulation. In particular, the Board proposes to add a definition of the term acting in concert and includes specific presumptions of concerted action to provide guidance to acquirors. In addition, the proposal incorporates current Board practice that the acquisition of a loan in default that is secured by voting securities of a state member bank or bank holding company is presumed to be an acquisition of the underlying securities.

The proposal also would reduce regulatory burden on persons whose ownership percentage increases as the result of a redemption of voting securities by the issuing bank or the action of a third party not within the acquiring person's control. In these situations, the proposal would permit the person affected by the bank or third party action to file a notice within 90 calendar days after the transaction occurs, provided that the acquiring person does not reasonably have advance knowledge of the triggering transaction. Currently, these persons must file notice under the CIBC Act prior to the action that increases the person's percentage ownership, and, because these persons cannot control the third party action that causes the increased percentage ownership, are often put in violation of the CIBC Act and the Board's Regulation Y.

The Board also proposes to provide more flexible timing for newspaper announcements of filings under the CIBC Act by permitting notificants to publish the announcement up to 30 calendar days before submitting the filing. In addition, the

newspaper notice requirement would be modified to eliminate the requirement that the notice include a statement of the percentage of shares proposed to be acquired. Finally, the proposal would add a new section reflecting the stock loan reporting requirements in section 205 of the Federal Deposit Insurance Corporation Improvement Act.

The Board invites comment on all of its proposed revisions to the CIBC Act implementing regulation. In particular, the Board requests comment on whether the revisions identifying when persons will be presumed to be acting in concert identify all relevant situations in which a bank may undergo a change in control. The Board also requests comment on other ways that its implementing rules under the CIBC Act may be modified to eliminate unnecessary burden and paperwork, consistent with the requirements of the CIBC Act.

3. Notice of Change of Directors and Senior Executive Officers

In addition to the BHC Act and CIBC Act, Regulation Y implements section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (section 914). Section 914 requires a state member bank and a bank holding company (together, "regulated institutions") to give prior notice to the System before changing directors or senior executive officers if the regulated institution is in financially troubled condition, has undergone a change in control within two years, or has been chartered for less than two years.

The proposed rule retains a number of the current regulation's substantive provisions. For example, the financial condition of regulated institutions remains the focus for defining when an institution's troubled condition would trigger the prior notice requirements of section 914. The proposed rule also continues to interpret a change in control for purposes of section 914 to mean a transaction that requires a filing under the CIBC Act. Accordingly, section 914 filings are not triggered by the acquisition of a state member bank by a bank holding company under section 3 of the BHC Act.

The current rule would be modified in several ways. The proposed rule would eliminate any filing requirement under section 914 for charter conversions and "phantom" bank mergers (chartering an insured depository institution to facilitate the acquisition of an existing insured depository institution) if the converting or acquired depository institution has been in operation for at least two years.

The proposed rule also would adopt the System's current practice of granting individuals who seek election to the board of directors of regulated institutions without the support of

management an automatic waiver that allows these individuals to commence service immediately after election to the board and to make a post-election filing under section 914. In addition, the proposed rule would provide more guidance on appealing a disapproved notice. Other changes have been proposed in cooperation with the staffs of the other banking agencies in an attempt to develop uniform definitions, notice procedures and appeals procedures.

The Board invites public comment on these changes, as well as on other ways that the procedures for reviewing changes in officers and directors may be revised to reduce unnecessary burden consistent with the requirements of section 914.

4. Other changes

The Board has also proposed several other modifications to the regulation to incorporate previous Board decisions and policies regarding the definitions of "class of voting securities" and "immediate family" and has modified references and several time periods for Reserve Bank action to accommodate the changes explained above. Public comment is welcome on these proposed revisions.

In addition, the Board invites public comment on other suggestions for revising Regulation Y to eliminate unnecessary burden and paperwork consistent with the Board's statutory mandates and safety and soundness.

Attached is a draft of Regulation Y that incorporates the proposed revisions. These revisions affect Subparts A, B, C and E, Appendix C and the Board's interpretation at 12 CFR 225.125. Changes to the Board's Rules of Procedure will be made as necessary to conform to changes to Regulation Y that are finally adopted. No changes are being proposed at this time to subparts D, F or G, which address, respectively, Control and Divestiture Proceedings, Limitations on Nonbank Banks and Appraisal Standards for Federally Related Transactions.

REGULATORY FLEXIBILITY ACT

Pursuant to the Regulatory Flexibility Act, the Board is required to conduct an analysis of the effect, on small institutions, of the proposed revision to Regulation Y. As of December 31, 1995, the number of bank holding companies totalled

5,274.[14/] The following chart provides a distribution, based on asset size, for those companies.

Asset Size Category (M = Million)	Number of Bank Holding Companies	Percent of Bank Holding Company Assets
less than $150M	3,954	5.5%[15/]
$150M - $300M	655	3.2%
greater than $300M	665	91.3%

The proposed comprehensive revision to Regulation Y is intended to eliminate unnecessary burden for all bank holding companies, including smaller banking organizations. Included in the proposed revision are an expedited 15-day notice procedure with minimal information requirements for well-rated and well-run bank holding companies, a reorganization and streamlining of the regulatory laundry list of permissible nonbanking activities, the removal of unnecessary and outmoded regulatory restrictions, and an automatic waiver of filing requirements for bank acquisitions that are in-substance bank-to-bank mergers. These changes apply to all bank holding companies and will be particularly helpful to small bank holding companies.

The proposed revisions include a number of other changes applicable to smaller organizations in particular. These changes include a special exception for small bank holding companies with assets of less than $300 million from the aggregate size limit applying to the use of the expedited application procedures, an update of the small bank holding company policy statement that applies to bank holding companies with assets of less than $150 million and reduction of burden for qualifying small bank holding companies, reduction of the thresholds for qualification for streamlined formation of new bank holding companies, reduction in the filing requirements under the Change in Bank Control Act, and addition of a new exception for small bank holding companies from the prior

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[14/] Financial top-tier domestic bank holding companies. Excludes middle-tier bank holding companies, and foreign bank holding companies that are not required to file a Y-9 report with the Federal Reserve System.

[15/] Bank holding companies with consolidated assets of less than $150 million are not required to file financial regulatory reports on a consolidated basis. Assets for this group are estimated based on reports filed by the parent companies and subsidiaries.

approval requirements regarding stock redemption proposals. These and the other changes described above are explained in more detail in the Supplementary Information portion of this document.

The Board expects that the numerous changes proposed will result in a significant reduction in regulatory filings, in the paperwork burden and processing time associated with regulatory filings, and in the costs associated with complying with regulation, thereby improving the ability of all bank holding companies, including small organizations, to conduct business on a more cost-efficient basis. The Board invites public comment on this subject.

PAPERWORK REDUCTION ACT

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-00171, 7100-0121, 7100-0134, 7100-0131, 7100-0119, as applicable; see below), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR 225.11, 12 CFR 225.12, 12 CFR 225.14, 12 CFR 225.17, 12 CFR 225.23, 12 CFR 225.24, 12 USC 1817(j) and 1831(i), 12 CFR 225.73, 12 CFR 225.4, and 12 CFR 225.3(a). This information is required to evidence compliance with the requirements of the Bank Holding Company Act, the Change in Bank Control Act and provisions of the Federal Deposit Insurance Act. The respondents are for-profit financial institutions and other corporations, including small businesses, and individuals.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless it displays a currently valid OMB control number. The OMB control numbers are indicated below.

The proposed streamlining of applications to acquire banks and nonbanking companies by institutions that meet the qualifying criteria should result in a significant reduction in burden for respondents that file the Application for Prior Approval To Become a Bank Holding Company, or for a Bank Holding Company To Acquire an Additional Bank or Bank Holding Company (FR Y-3; OMB No. 7100-0171). Approximately 196 respondents file the FR Y-3 annually pursuant to section 3(a)(1) of the Bank Holding Company Act (Act) and 303 respondents file annually the FR Y-3 pursuant to section 3(a)(3) and 3(a)(5) of the Act. The current burden

per response is 48.5 hours and 59.0 hours, respectively, for a total estimated annual burden of 27,383 hours. Under the proposed rule, it is estimated that 50 percent of these respondents, or a total of 249 respondents for both types of applications, would meet the criteria to qualify for the filing of a streamlined application. The average number of hours per response for proposed applications of each type is estimated to decrease to 2.5 hours. Therefore the total amount of annual burden is estimated to be 14,343.5 hours. Based on an hourly cost of $50, the annual cost to the public under the proposed revision is estimated to be $717,175, which represents an estimated cost reduction of $651,975 from the estimated annual cost to the public of $1,369,150 under the current rule.

The proposed streamlining of applications to engage *de novo* in permissible nonbanking activities and to acquire nonbanking companies and the proposal to permit bank holding companies to obtain approval at one time to engage in a preauthorized list of such activities should result in a significant reduction in burden for respondents that file the Application for Prior Approval To Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y-4; OMB No. 7100-0121). Approximately 362 respondents file the FR Y-4 annually to meet application requirements, and 114 respondents file to meet notification requirements. The current burden per response is 59.0 hours and 1.5 hours, respectively, for a total estimated annual burden of 21,529 hours. Under the proposed rule it is estimated that 50 percent of these respondents would meet the criteria to qualify for the filing of a streamlined application, representing an estimated 181 applications and 57 notifications. The average number of hours per response for proposed applications of this type is estimated to decrease to 1.5 hours. The estimated burden per response to meet the notification requirement remains unchanged at 1.5 hours. Therefore the total amount of annual burden is estimated to be 11,121.5 hours. Based on an hourly cost of $50, the annual cost to the public under the proposed revision is estimated to be $556,075, which represents an estimated cost reduction of $520,375 from the current estimated annual cost to the public of $1,076,450 under the current rule.

The proposed elimination of the requirement that a person who has already received Board approval under the Change in Bank Control Act obtain additional approvals to acquire additional shares of the same bank or bank holding company should result in a significant reduction in burden for respondents that file the Notice of Change in Bank Control (FR 2081; OMB No. 7100-0134). Approximately 300 respondents file the FR 2081 annually to meet the notification requirements of change in control, 280 respondents file to meet the requirements for notice of a change in director or senior executive officer, and 1000 respondents file to meet requirements to report certain biographical and financial information. The current burden per response for each

requirement is 30.0 hours, 2.0 hours, and 4.0 hours, respectively, for a total estimated annual burden of 13,560 hours. Under the proposed rule it is estimated that 50 percent fewer notifications of change in control will be filed for an annual total of 150 responses. The estimated number of filings to meet the other two requirements and the estimated average hours per response for each requirement remains unchanged. Therefore the total amount of annual burden is estimated to be 9,060 hours. Based on an hourly cost of $20, the total annual cost to the public under the proposed revision is estimated to be $181,200, which represents an estimated cost reduction of $90,000 from the current estimated annual cost to the public of $271,200 under the current rule.

The proposed allowance for bank holding companies to take account of intervening new issues of stock in computing when a stock redemption notice must be filed and the exemption provided to small bank holding companies that meet certain leverage and capital requirements should result in a significant reduction in burden for respondents that file the Notice of Proposed Stock Redemption (FR 4008; OMB No. 7100-0131). Approximately 50 respondents file the FR 4008 annually. The current burden per response is 15.5 hours, for a total estimated annual burden of 775 hours. Under the proposed rule it is estimated that 50 percent fewer notifications will be filed for an annual total of 25 responses and the estimated average hours per response remains unchanged. Therefore the total amount of annual burden is estimated to be 387.5 hours. Based on an hourly cost of $30, the total annual cost to the public under the proposed revision is estimated to be $11,625, which represents a cost reduction of $11,625 from the current estimated cost to the public of $23,250 under the current rule.

The proposed streamlining of application requirements are not expected to change the ongoing annual burden associated with the Application for a Foreign Organization to Become a Bank Holding Company (FR Y-1f; OMB No. 7100-0119). Approximately 2 respondents file the FR Y-1f annually. The current burden per response is 77 hours for a total estimated annual burden of 144 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,080.

All information contained in these collections of information are available to the public unless the respondent can substantiate that disclosure of certain information would result in substantial competitive harm or an unwarranted invasion of personal privacy or would otherwise qualify for an exemption under the Freedom of Information Act.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether

the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

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 out in the preamble, the Board proposes to amend 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(l), 3106, 3108, 3310, 3331-3351, 3907, and 3909.

2. Subpart A is amended by revising §§ 225.1-225.7 to read as follows:

Subpart A - General Provisions

Sec.

§ 225.1 Authority, purpose, and scope.

(a) Authority. This part[1/] (Regulation Y) is issued by the Board of Governors of the Federal Reserve System (Board) under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)) (BHC Act); sections 8 and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3106 and 3108); section 7(j)(13) of the Federal Deposit Insurance Act, as amended

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[1/] Code of Federal Regulations, title 12, chapter II, part 225.

by the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(13)) (Bank Control Act); section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)); section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1831i); and the International Lending Supervision Act of 1983 (Pub. L. 98-181, title IX). The BHC Act is codified at 12 U.S.C. 1841, et seq.

(b) Purpose. The principal purposes of this part are to regulate the acquisition of control of banks by companies and individuals, to define and regulate the nonbanking activities in which bank holding companies and foreign banking organizations with United States operations may engage, and to set forth the procedures for securing approval for such transactions and activities.

(c) Scope. (1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B governs acquisitions of bank or bank holding company securities and assets by bank holding companies or by any company that will become a bank holding company as a result of the acquisition.

(3) Subpart C defines and regulates the nonbanking activities in which bank holding companies and foreign banking organizations may engage directly or through a subsidiary. In addition, certain nonbanking activities conducted by foreign banking organizations and certain foreign activities conducted by bank holding companies are governed by the Board's Regulation K (12 CFR part 211, International Banking Operations).

(4) Subpart D specifies situations in which a company is presumed to control voting securities or to have the power to exercise a controlling influence over the management or policies of a bank or other company, sets forth the procedures for making a control determination, and provides rules governing the effectiveness of divestitures by bank holding companies.

(5) Subpart E governs changes in bank control resulting from the acquisition by individuals or companies (other than bank holding companies) of voting securities of a bank holding company or state member bank of the Federal Reserve System.

(6) Subpart F specifies the limitations that govern companies that control so-called nonbank banks and the activities of nonbank banks.

(7) Subpart G prescribes minimum standards that apply to the performance of real estate appraisals and identifies transactions that require state certified appraisers.

(8) Subpart H identifies the circumstances when written notice must be provided to the Board prior to the appointment of a director or senior officer of a bank holding company and establishes procedures for obtaining the required Board approval.

(9) Appendix A to the regulation contains the Board's Risk-Based Capital Adequacy Guidelines for bank holding companies and for state member banks.

(10) Appendix B to the regulation contains the Board's Capital Adequacy Guidelines for measuring leverage for bank holding companies and state member banks.

(11) Appendix C to the regulation contains the Board's policy statement governing small bank holding companies.

(12) Appendix D to the regulation contains the Board's capital adequacy guidelines for measuring tier 1 leverage for bank holding companies.

§ 225.2 Definitions.

Except as modified in this regulation or unless the context otherwise requires, the terms used in this regulation have the same meanings as set forth in the relevant statutes.

(a) Affiliate. Affiliate means any company that controls, is controlled by, or is under common control with, a bank or nonbank bank.

(b) Bank. (1) Bank means:

(i) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); or

(ii) An institution organized under the laws of the United States which both:

(A) Accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(B) Is engaged in the business of making commercial loans.

(2) The term bank does not include those institutions qualifying under the exceptions listed in section 2(c)(2) of the BHC Act (12 U.S.C. 1841(c)(2)).

(c) Bank holding company. (1) Bank holding company means any company (including a bank) that has direct or indirect control of a bank, other than control that results from the ownership or control of:

(i) Voting securities held in good faith in a fiduciary capacity (other than as provided in paragraphs (e)(2)(ii) and (iii) of this section) without sole discretionary voting authority, or as otherwise exempted under section 2(a)(5)(A) of the BHC Act;

(ii) Voting securities acquired and held only for a reasonable period of time in connection with the underwriting of securities, as provided in section 2(a)(5)(B) of the BHC Act;

(iii) Voting rights to voting securities acquired for the sole purpose and in the course of participating in a proxy solicitation, as provided in section 2(a)(5)(C) of the BHC Act;

(iv) Voting securities acquired in satisfaction of debts previously contracted in good faith, as provided in section 2(a)(5)(D) of the BHC Act, if the securities are divested within two years of acquisition (or such later period as the Board may permit by order); or

(v) Voting securities of certain institutions owned by a thrift institution or a trust company, as provided in sections 2(a)(5)(E) and (F) of the BHC Act.

(2) Except for the purposes of section 225.4(b) of this subpart and subpart E of this regulation or as otherwise provided in this regulation, the term bank holding company includes a foreign banking organization. For the purposes of subpart B, the term bank holding company includes a foreign banking organization only if it owns or controls a bank in the United States.

(d) Company. (1) Company includes any bank, corporation, general or limited partnership, association or similar organization, business trust, or any other trust unless by its terms it must terminate either within 25 years, or within 21 years and 10 months after the death of individuals living on the effective date of the trust.

(2) Company does not include any organization, the majority of the voting securities of which are owned by the United States or any state.

(3) Testamentary Trusts Exempt. Unless the Board finds that the trust is being operated as a business trust, a trust is presumed not to be a company if the trust:

(i) Terminates within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust;

(ii) Is a testamentary trust established by an individual or individuals for the benefit of natural persons (or trusts for

the benefit of natural persons) who are related by blood, marriage or adoption;

(iii) Contains only assets previously owned by the individual or individuals who established the trust;

(iv) Is not a Massachusetts business trust; and

(v) Does not issue shares, certificates or any other evidence of ownership.

(e) Control. (1) Control of a bank or other company means (except for the purposes of subpart E):

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or other company, directly or indirectly or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the bank or other company;

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or other company, as determined by the Board after notice and opportunity for hearing in accordance with § 225.31 of subpart D of this regulation; or

(iv) Conditioning in any manner the transfer of 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company upon the transfer of 25 percent or more of the outstanding shares of any class of voting securities of another bank or other company.

(2) A bank or other company is deemed to control voting securities or assets owned, controlled, or held, directly or indirectly:

(i) By any subsidiary of the bank or other company;

(ii) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the bank or other company or of any of its subsidiaries; or

(iii) In a fiduciary capacity for the benefit of the bank or other company or any of its subsidiaries.

(f) Foreign banking organization. Foreign banking organization and qualifying foreign banking organization shall

have the same meanings as provided in § 211.23 of the Board's Regulation K (12 CFR 211.23).

(g) Management official. Management official means any officer, director (including honorary or advisory directors), partner, or trustee of a bank or other company, or any employee of the bank or other company with policy-making functions.

(h) Nonbank bank. Nonbank bank means any institution that:

(1) Became a bank as a result of enactment of the Competitive Equality Amendments of 1987 (Pub. L. 100-86), on the date of such enactment (August 10, 1987); and

(2) Was not controlled by a bank holding company on the day before the enactment of the Competitive Equality Amendments of 1987 (August 9, 1987).

(i) Outstanding shares. Outstanding shares means any voting securities, but does not include securities owned by the United States or by a company wholly owned by the United States.

(j) Person. Person includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(k) Savings association. Savings association means:

(1) Any federal savings association or federal savings bank;

(2) Any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

(3) Any savings bank or cooperative which is deemed by the director of the Office of Thrift Supervision to be a savings association under section 10(l) of the Home Owners Loan Act.

(l) Shareholder. (1) Controlling shareholder means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(2) Principal shareholder means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a bank or other company.

(m) Subsidiary. Subsidiary means a bank or other company that is controlled by another company, and refers to a direct or indirect subsidiary of a bank holding company. An indirect subsidiary is a bank or other company that is controlled by a subsidiary of the bank holding company.

(n) United States. United States means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(o) Voting securities. (1) In general. Voting securities means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder: (i) to vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) to vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) Nonvoting shares. Preferred shares, limited partnership shares or interests, or similar interests are not voting securities if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

(3) Class of voting shares. Shares of stock issued by a single issuer are deemed to be the same class of voting shares, regardless of differences in dividend rights or liquidation preference, if the shares are voted together as a single class on all matters for which the shares have voting rights other than matters described in paragraph (2)(i) of this section that affect solely the rights or preferences of the shares.

§ 225.3 Administration.

(a) Delegation of authority. Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation and in the Board's Rules Regarding Delegation of Authority (12 CFR part 265) and the Board's Rules of Procedure (12 CFR part 262).

(b) Appropriate Federal Reserve Bank. In administering this regulation, unless a different Federal Reserve Bank is designated by the Board, the appropriate Federal Reserve Bank is as follows:

(1) For a bank holding company (or a company applying to become a bank holding company): the Reserve Bank of the Federal Reserve district in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary banks on the date it became (or will become) a bank holding company;

(2) For a foreign banking organization that has no subsidiary bank and is not subject to paragraph (b)(1) of this section: the Reserve Bank of the Federal Reserve district in which the total assets of the organization's United States branches, agencies, and commercial lending companies are the largest as of the later of January 1, 1980, or the date it becomes a foreign banking organization;

(3) For an individual or company submitting a notice under subpart E of this regulation: the Reserve Bank of the Federal Reserve district in which the banking operations of the bank holding company or state member bank to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

§ 225.4 Corporate practices.

(a) Bank holding company policy and operations. (1) A bank holding company shall serve as a source of financial and managerial strength to its subsidiary banks and shall not conduct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a bank holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a bank) constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary bank of the bank holding company and is inconsistent with sound banking principles or the purposes of the BHC Act or the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) et seq.), the Board may require the bank holding company

to terminate the activity or to terminate control of the subsidiary, as provided in section 5(e) of the BHC Act.

(b) Purchase or redemption by a bank holding company of its own securities. (1) Filing notice. Except as provided in paragraph (6) or paragraph (7) of this section, a bank holding company shall give the Board prior written notice before purchasing or redeeming its equity securities if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period.

(2) Content of notice. Any notice under this section shall be filed with the appropriate Reserve Bank and shall contain the following information:

(i) The purpose of the transaction, a description of the securities to be purchased or redeemed, the total number of each class outstanding, the gross consideration to be paid, and the terms of any debt incurred in connection with the transaction;

(ii) A description of all equity securities redeemed within the preceding 12 months, the net consideration paid, and the terms of any debt incurred in connection with those transactions; and

(iii) A current and pro forma consolidated balance sheet if the bank holding company has total assets of over $150 million, or a current and pro forma parent-company-only balance sheet if the bank holding company has total assets of $150 million or less.

(3) Acting on notice. Within 15 calendar days of receipt of a notice under this section, the appropriate Reserve Bank shall either approve the transaction proposed in the notice or refer the notice to the Board for decision. If the notice is referred to the Board for decision, the Board shall act on the notice within 30 calendar days after the Reserve Bank receives the notice.

(4) Factors considered in acting on notice. The Board may disapprove a proposed purchase or redemption if it finds that the proposal would constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board. In determining whether a proposal constitutes an unsafe or unsound

practice, the Board will consider whether the bank holding company's financial condition, after giving effect to the proposed purchase or redemption, meets the financial standards applied by the Board under section 3 of the BHC Act, including the Board's Capital Adequacy Guidelines (appendix A) and the Board's Policy Statement for Small Bank Holding Companies (appendix C).

(5) Disapproval and hearing. The Board shall notify the bank holding company in writing of the reasons for a decision to disapprove any proposed purchase or redemption. Within 10 calendar days of receipt of a notice of disapproval by the Board, the bank holding company may submit a written request for a hearing. The Board will order a hearing within 10 calendar days of receipt of that request if it finds that material facts are in dispute or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR part 263). At the conclusion of the hearing, the Board shall by order approve or disapprove the proposed purchase or redemption on the basis of the record of the hearing.

(6) Exception for well-capitalized bank holding companies. A bank holding company is not required to obtain prior Board approval for the redemption or purchase of its equity securities under this section provided:

(i) The total and tier 1 risk-based capital ratios and the leverage capital ratio for the bank holding company, both before and following the redemption, exceed the thresholds established for well-capitalized state member banks under 12 CFR 208.33(b)(1) as if the bank holding company (on a consolidated basis) were deemed to be a state member bank;

(ii) The bank holding company received a BOPEC composite 1-S or 2-S rating at its most recent inspection; and

(iii) The bank holding company is not the subject of any unresolved supervisory issues.

(7) Exception for small bank holding companies. A bank holding company that has less than $150 million in total assets and no public debt outstanding, and does not engage in any leveraged nonbanking activities, is not required to obtain prior Board approval for the redemption or purchase of its equity securities under this section provided:

(i) The bank holding company received a BOPEC composite 1-S or 2-S rating at its most recent inspection;

(ii) The bank holding company has a debt to equity ratio of not more than 1.0:1 on a pro forma basis;

(iii) Each bank controlled by the bank holding company is rated composite 1 or 2 as of its most recent examination;

(iv) The total and tier 1 risk-based capital ratios and the leverage capital ratio for each bank controlled by the bank holding company, both before and following the redemption, exceed the thresholds established for "well-capitalized" state member banks under 12 CFR 208.33(b)(1); and

(v) The bank holding company is not the subject of any unresolved supervisory issues.

(c) Deposit insurance. Every bank that is a bank holding company or a subsidiary of a bank holding company shall obtain Federal Deposit Insurance and shall remain an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

(d) Acting as transfer agent, municipal securities dealer, or clearing agent. A bank holding company or any nonbanking subsidiary that is a "bank", as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)), and that is a transfer agent of securities, a municipal securities dealer, a clearing agency, or a participant in a clearing agency (as those terms are defined in section 3(a) of the Securities Exchange Act (12 U.S.C. 78c(a)), shall be subject to §§ 208.8(f)—(j) of the Board's Regulation H (12 CFR 208.8(f)—(j)) as if it were a state member bank.

(e) Reporting requirement for credit secured by certain bank holding company stock. Each executive officer or director of a bank holding company the shares of which are not publicly traded shall report annually to the board of directors of the bank holding company the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the bank holding company. For purposes of this paragraph, the terms "executive officer" and "director" shall have the meaning given in § 215.2 of Regulation O, 12 CFR 215.2.

(f) Criminal referral report. A bank holding company or any nonbank subsidiary thereof, or a foreign bank that is subject to the BHC Act or any nonbank subsidiary of such foreign bank operating in the United States, shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

§ 225.5 Registration, reports, and inspections.

(a) Registration of bank holding companies. Each company shall register within 180 days after becoming a bank holding company by furnishing information in the manner and form prescribed by the Board. A company that receives the Board's

prior approval under subpart B of this regulation to become a bank holding company may complete this registration requirement through submission of its first annual report to the Board as required by paragraph (b) of this section.

(b) Reports of bank holding companies. Each bank holding company shall furnish, in the manner and form prescribed by the Board, an annual report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year during which it remains a bank holding company. Additional information and reports shall be furnished as the Board may require.

(c) Examinations and inspections. The Board may examine or inspect any bank holding company and each of its subsidiaries and prepare a report of their operations and activities. With respect to a foreign banking organization, the Board may also examine any branch or agency of a foreign bank in any state of the United States and may examine or inspect each of the organization's subsidiaries in the United States and prepare reports of their operations and activities. The Board will rely as far as possible on the reports of examination made by the primary federal or state supervisor of the subsidiary bank of a bank holding company or of the branch or agency of the foreign bank.

§ 225.6 Penalties for violations.

(a) Criminal and civil penalties. Section 8 of the BHC Act provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual of the BHC Act or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a bank holding company. Civil money penalty assessments for violations of the BHC Act shall be made in accordance with subpart C of the Board's Rules of Practice for Hearings (12 CFR part 263, subpart C). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 U.S.C. 1817(j)(15).

(b) Cease-and-desist proceedings. For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) et seq.).

§ 225.7 Exceptions to tying restrictions.

(a) Purpose. This section establishes exceptions to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)). These exceptions are in addition to statutory exceptions in

section 106. The section also restricts tying of electronic benefit transfer services by bank holding companies and their nonbank subsidiaries.

(b) Exceptions to statute. Subject to the limitations of paragraph (c), a bank may:

(1) Traditional bank products. Extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement that a customer:

(i) obtain a traditional bank product from an affiliate of the bank; or

(ii) provide some additional credit, property, or service to an affiliate of the bank that is related to and usually provided in connection with a traditional bank product.

(2) Safe harbor for combined-balance discounts. Vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank (eligible products), if:

(i) the bank offers deposits, and all such deposits are eligible products; and

(ii) balances in deposits count at least as much as nondeposit products toward the minimum balance.

(c) Limitations on exceptions. Any exception granted pursuant to this section shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices. The eligibility of a bank to operate under any exception granted pursuant to this section shall terminate upon a finding by the Board that its exercise of this authority is resulting in anticompetitive practices.

(d) Electronic benefit transfer services. A bank holding company or nonbank subsidiary of a bank holding company that provides electronic benefit transfer services shall be subject to the anti-tying restrictions applicable to such services set forth in section 7(i)(11) of the Food Stamp Act of 1977 (7 U.S.C. 2016(i)(11).

(e) Definitions. For purposes of this section:

(1) Traditional bank product means a loan, discount, deposit, or trust service.

(2) Affiliate has the meaning given such term in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)).

3. Subpart B is amended by revising §§ 225.11 through 225.15; and §§ 225.16 and 225.17 are added to read as follows:

Subpart B - Acquisition of Bank Securities or Assets

§ 225.11 Transactions requiring Board approval

The following transactions require 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 § 225.17 of this part:

(a) Formation of bank holding company. Any action that causes a bank or other company to become a bank holding company.

(b) Acquisition of subsidiary bank. Any action that causes a bank to become a subsidiary of a bank holding company.

(c) Acquisition of control of bank or bank holding company securities. The acquisition by a bank holding company of direct or indirect ownership or control of any voting securities of a bank or bank holding company, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the bank or bank holding company. An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the bank holding company's proportional share of any class of voting securities.

(d) Acquisition of bank assets. The acquisition by a bank holding company or by a subsidiary thereof (other than a bank) of all or substantially all of the assets of a bank.

(e) Merger of bank holding companies. The merger or consolidation of bank holding companies, including a merger through the purchase of assets and assumption of liabilities.

(f) Transactions by foreign banking organization. Any transaction described in paragraphs (a) through (e) of this section by a foreign banking organization (as defined in 12 CFR 211.21(n)) that involves the acquisition of an interest in a U.S. bank or in a bank holding company for which application would be

required if the foreign banking organization were a bank holding company.

§ 225.12 Transactions not requiring Board approval.

The following transactions do not require the Board's approval under § 225.11 of this subpart:

(a) Acquisition of securities in fiduciary capacity. The acquisition by a bank or other company (other than a trust that is a company) of control of voting securities of a bank or bank holding company in good faith in a fiduciary capacity, unless:

(1) The acquiring bank or other company has sole discretionary authority to vote the securities and retains the authority for more than two years; or

(2) The acquisition is for the benefit of the acquiring bank or other company, or its shareholders, employees, or subsidiaries.

(b) Acquisition of securities in satisfaction of debts previously contracted. The acquisition by a bank or other company of control of voting securities of a bank or bank holding company in the regular course of securing or collecting a debt previously contracted in good faith, if the acquiring bank or other company divests the securities within two years of acquisition. The Board or Reserve Bank may grant requests for up to three one-year extensions.

(c) Acquisition of securities by a bank holding company with majority control. The acquisition by a bank holding company of additional voting securities of a bank or bank holding company if more than 50 percent of the outstanding voting securities of the bank or bank holding company is lawfully controlled by the acquiring bank holding company prior to the acquisition.

(d) Acquisitions involving bank mergers. (1) Transactions subject to Bank Merger Act. The merger or consolidation of a subsidiary bank of a bank holding company with another bank, or the purchase of assets by such a subsidiary bank, or a similar transaction involving subsidiary banks of a bank holding company, if the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C.1828(c)) and does not involve the acquisition of shares of a bank. This exception does not include:

(i) The merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank; or

(ii) Any transaction requiring the Board's prior approval under § 225.11(e) of this subpart. The Board may require an application under this subpart if it determines that the merger or consolidation would have a significant adverse impact on the financial condition of the bank holding company or otherwise requires approval under section 3 of the BHC Act.

(2) Certain acquisitions subject to the Bank Merger Act. The acquisition by a bank holding company of shares of a bank or company controlling a bank, or the merger of a company controlling a bank with the bank holding company, as part of the merger or consolidation of the bank with a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company or as part of the purchase of substantially all of the assets of the bank by a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, if:

(i) The bank merger, consolidation, or asset purchase occurs simultaneously with the acquisition of the shares of the bank or bank holding company or the merger of holding companies, and the bank is not operated by the acquiring bank holding company as a separate entity other than as the survivor of the merger, consolidation or asset purchase;

(ii) The transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c));

(iii) The transaction does not involve the acquisition of any nonbank company that would require prior approval under section 4 of the BHC Act (12 U.S.C. 1843);

(iv) Both before and after the transaction, the acquiring bank holding company meets the Board's Capital Adequacy Guidelines (appendixes A, B and C of this part);

(v) At least 10 days prior to the transaction, the acquiring bank holding company has provided to the Reserve Bank written notice of the transaction that contains:

(A) A copy of the filing made to the appropriate federal banking agency under the Bank Merger Act, and

(B) A description of the holding company's involvement in the transaction, the purchase price and the source of funding for the purchase price; and

(vi) Prior to expiration of the period provided in subparagraph (v), the Reserve Bank has not informed the bank holding company that an application under § 225.11 is required.

(3) Internal corporate reorganizations.

(i) Subject to paragraph (ii)of this section, any of the following transactions performed by a bank holding company:

(A) The merger of subsidiary holding companies;

(B) The formation of a subsidiary holding company;

(C) The transfer of control or ownership of a subsidiary bank from one subsidiary holding company to another subsidiary holding company or to the parent holding company.

(ii) A transaction described in paragraph (i) of this section qualifies for this exception if:

(A) The transaction represents solely a corporate reorganization involving companies and insured depository institutions that, both preceding and following the transaction, are controlled and operated by the bank holding company;

(B) The transaction does not involve the acquisition of additional voting shares of an insured depository institution that, prior to the transaction, was less than majority owned by the bank holding company;

(C) Both before and after the transaction, the bank holding company meets the Board's capital adequacy guidelines (appendixes A, B and C of this part); and

(D) At least 10 days prior to the transaction, the bank holding company has provided to the Reserve Bank written notice of the transaction and the Reserve Bank has not informed the bank holding company that an application under § 225.11 is required.[1/]

(e) Holding securities in escrow. The holding of any voting securities of a bank or bank holding company in an escrow arrangement for the benefit of an applicant pending the Board's action on an application for approval of the proposed acquisition, if title to the securities and the voting rights remain with the seller and payment for the securities has not been made to the seller.

(f) Acquisition of foreign banking organization. The acquisition of a foreign banking organization (as defined in 12 CFR 211.21(n)) where the foreign banking organization does not directly or indirectly own or control a bank in the United States, unless the acquisition is also by a foreign banking

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[1/] In the case of transactions that result in the formation or designation of a new bank holding company, the new bank holding company must also complete the registration requirements described in § 225.5.

organization and otherwise subject to § 225.11(f) of this subpart.

§ 225.13 Factors considered in acting on bank acquisition proposals.

(a) Factors requiring denial. As specified in section 3(c) of the BHC Act, the Board may not approve any application under this subpart if:

(1) The transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in any part of the United States;

(2) The effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anticompetitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community;

(3) The applicant has failed to provide the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder; or

(4) In the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in § 211.24(c)(1)(ii) of the Board's Regulation K (12 CFR 211.24(c)(1)(ii)).

(b) Other factors. In deciding applications under this subpart, the Board also considers the following factors with respect to the applicant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank or banks to be acquired:

(1) Financial condition. Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.

(2) Managerial resources. The competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, its subsidiaries and the banks and bank holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates

of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) Convenience and needs of the community. The convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) and regulations issued thereunder, including the Board's Regulation BB (12 CFR part 228.).

(c) Interstate transactions. The Board may approve any application or notice under this subpart by a bank holding company to acquire control of or all or substantially all of the assets of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under the law of any state, if the transaction complies with the requirements of section 3(d) of the BHC Act (12 U.S.C. 1842(d)).

§ 225.14--Expedited action for certain bank acquisitions by well-run bank holding companies.

(a) Filing of notice. (1) Information required and public notice. As an alternative to the procedure provided in § 225.15, a bank holding company that meets the requirements of paragraph (b) of this section may satisfy the prior approval requirements of § 225.11 in connection with the acquisition of shares or control of a bank, or a merger or consolidation between registered bank holding companies, by providing the appropriate Reserve Bank with a written notice containing the following:

(i) A certification that all of the criteria in paragraph (b) of this section are met;

(ii) A description of the transaction that includes identification of the companies and insured depository institutions involved in the transaction, identification of each banking market affected by the transaction, and a description of the funding for the transaction;

(iii) Evidence that notice of the proposal has been published in accordance with § 225.16(b); and

(iv) A balance sheet and capital ratios for the acquiring bank holding company and the market indexes for each relevant banking market reflecting the pro forma effect of the transaction.

(2) Action on proposals under this section. The Board or the appropriate Reserve Bank shall act on a proposal submitted under this section or notify the bank holding company that the transaction is subject to the procedure in § 225.15 before the later of:

(i) 15 calendar days following the filing of all of the information required in paragraph (a)(1)of this section; or

(ii) 3 business days following the close of the public comment period;

(3) Acceptance of notice in event expedited procedure not available. In the event that the Board or the Reserve Bank determines after the filing of a notice under this section that a bank holding company may not use the procedure in this section and must file a notice under § 225.15, the notice shall be deemed accepted for purposes of § 225.15 as of the date that the notice was filed under this section.

(b) Criteria for use of expedited procedure. The procedure in this section is available only if:

(1) Well capitalized organization.

(i) Bank holding company. Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well capitalized;[2/]

(ii) Insured depository institutions. Both at the time of and immediately after the proposed transaction,

(A) The lead insured depository institution of the acquiring bank holding company is well capitalized;

(B) Well capitalized insured depository institutions control at least 80 percent of the total assets of insured depository institutions controlled by the acquiring bank holding company; and

(C) No insured depository institution controlled by the acquiring bank holding company is undercapitalized;

(2) Well managed organization. At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 80 percent of the total assets of insured depository institutions controlled by such holding company are well managed;

[2/] For purposes of this paragraph, a bank holding company with assets under $150 million will be deemed to have met the requirements of this paragraph if the parent bank holding company's ratio of pro forma debt to equity is 1.0:1 or less and the proposal in all other respects meets the requirements of appendix C of this part.

(3) Established CRA performance record. At the time of the transaction, the lead insured depository institution of the acquiring bank holding company, and insured depository institutions that control at least 80 percent of the total assets of insured depository institutions controlled by such holding company have received a 'satisfactory' or better composite rating and at least a satisfactory rating for consumer compliance at the most recent examination under the Community Reinvestment Act;

(4) Competitive criteria. (i) Competitive screen. Without regard to any divestitures proposed by the acquiring bank holding company, the acquisition does not cause:

(A) Insured depository institutions controlled by the acquiring bank holding company to control in excess of 35 percent of market deposits in any relevant banking market, or

(B) The Herfindahl-Hirschman index to increase by more than 200 points in any relevant banking market with a post-acquisition index of at least 1800;

(ii) Department of Justice. The Department of Justice has not indicated to the Board that consummation of the transaction is likely to have a significantly adverse effect on competition in any relevant banking market;

(5) Size of acquisition. Either:

(i) In general. The book value of the aggregate risk-weighted assets acquired by the acquiring bank holding company in all transactions approved during the previous 12 months under this section and § 225.23 does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company; or

(ii) Small bank holding companies. Immediately following consummation of the proposed transaction, the consolidated total assets of the acquiring bank holding company are less than $300 million;

(6) Interstate acquisitions. Board approval of the transaction is not prohibited under section 3(d) of the BHC Act;

(7) Other supervisory considerations. Board approval of the transaction is not prohibited under the informational sufficiency and comprehensive home country supervision standards set forth in section 3(c)(3) of the BHC Act; and

(8) Notification. The acquiring bank holding company has not been notified by the Board or Reserve Bank prior to the expiration of the period in paragraph (a)(2) of this section that an application under § 225.15 is required.

(c) Comment by primary banking supervisor. (1) Notice. Upon receipt of a notice under this section, the appropriate Reserve Bank shall promptly furnish notice of the proposal and a copy of the information filed pursuant to paragraph (a) of this section to the primary banking supervisor of the banks to be acquired.

(2) Comment period. The primary banking supervisor shall have 30 calendar days (or such shorter time as agreed to by the primary banking supervisor) from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(3) Action subject to supervisor's comment. Action by the Board or the Reserve Bank on a proposal under this section is subject to the condition that the primary banking supervisor not object to the proposal prior to the expiration of the comment period described in paragraph (c)(2) of this section. In the event that the primary banking supervisor provides written notice to the Board during the 30-day period described in paragraph (c)(2) of this section objecting to the proposal, any approval given under this section shall be revoked and the Board shall order a hearing on the proposal in accordance with section 3(b) of the Bank Holding Company Act;

(4) Emergencies. Notwithstanding paragraphs (2) and (3) of this section, the Board may provide the primary banking supervisor with 10 calendar days notice of a proposal under this section if the Board finds that an emergency exists requiring expeditious action, and may act during the notice period or without providing notice to the primary banking supervisor if the Board finds that it must act immediately to prevent probable failure.

(d) Definitions. For purposes of this section--

(1) Primary banking supervisor. The primary banking supervisor for an institution is:

(i) The Office of the Comptroller of the Currency in the case of a national banking association or District bank; and

(ii) The appropriate supervisory authority for the State in which the bank is chartered in the case of a State bank.

(2) Well managed. A company or depository institution is well managed if, at its most recent inspection or examination or subsequent review, the company or institution received:

(i) One of the highest two composite ratings; and

(ii) At least a satisfactory rating for management, if such a rating is given.

§ 225.15 Procedures for other bank acquisition proposals.

(a) Filing application. Except as provided in § 225.14, an application for the Board's prior approval under this subpart shall be governed by the provisions of this section and shall be filed with the appropriate Reserve Bank on the designated form.

(b) Notice to primary banking supervisor. Upon receipt of an application under this subpart, the Reserve Bank shall promptly furnish notice and a copy of the application to the primary banking supervisor of each bank to be acquired. The primary supervisor shall have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(c) Accepting application for processing. Within 7 calendar days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing or return the application if it is substantially incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board. The Reserve Bank or the Board may request additional information necessary to complete the record of an application at any time after accepting the application for processing.

(d) Action on applications. (1) Action under delegated authority. The Reserve Bank shall approve an application under this section within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate.

(2) Board action. The Board shall act on an application under this subpart that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and states the reasons for the extension. In no event may the extension exceed the 91-day period provided in § 225.16(e). The Board may at any time request additional information that it believes is necessary for its decision.

§ 225.16--Public notice, hearings and other provisions governing applications and notices.

(a) In general. The provisions of this section shall apply to all notices and applications filed under §§ 225.14 and 225.15.

(b) Public notice. (1) Newspaper publication.

(i) Location of publication. In the case of each notice or application submitted under §§ 225.14 or 225.15, the applicant shall cause a newspaper notice to be published in a newspaper of general circulation in the form and at the locations specified in § 262.3 of the Rules of Procedure (12 CFR 262.3);

(ii) Content of notice. A newspaper notice under this paragraph shall provide an opportunity for interested persons to comment on the proposal for a period of at least 30 calendar days; and

(iii) Timing of publication. Each newspaper notice published in connection with a proposal under this paragraph must be published no more than 30 calendar days before and no later than 7 calendar days following the date that a notice or application is filed with the appropriate Reserve Bank.

(2) Federal Register notice.

(i) Publication by Board. Upon receipt of a notice or application under § 225.14 or § 225.15, the Board shall promptly publish notice of the proposal in the Federal Register and shall provide an opportunity for interested persons to comment on the proposal for a period of at least 15 calendar days;

(ii) Request for advance publication. At any time during the 30-day period prior to filing a notice or application under § 225.14 or § 225.15, a bank holding company may request that the Board publish notice of a proposal in the Federal Register. A request for advance Federal Register publication must be made in writing to the appropriate Reserve Bank and must contain the identifying information prescribed by the Board for Federal Register publication;

(3) Waiver or shortening of notice. The Board may waive or shorten the required notice periods under this section if the Board determines that an emergency exists requiring expeditious action on the proposal or the Board finds that immediate action is necessary to prevent the probable failure of an insured depository institution.

(c) Notice to Attorney General. The Board or Reserve Bank shall immediately notify the Attorney General of approval of any notice or application under § 225.14 or § 225.15.

(d) Hearings. As provided in section 3(b) of the BHC Act, the Board shall order a hearing on any application or notice under §§ 225.14 or 225.15 if the Board receives from the primary supervisor of the bank to be acquired, within the 30-day period specified in § 225.14(c) or § 225.15(b), a written recommendation of disapproval of an application. The Board may order a formal or informal hearing or other proceeding on the application or

notice, as provided in § 262.3(i)(2) of the Board's Rules of Procedure. Any request for a hearing (other than from the primary supervisor) shall comply with section 262.3(e) of the Rules of Procedure (12 CFR 262.3(e)).

(e) Approval through failure to act. (1) Ninety-one day rule. An application or notice under § 225.14 or § 225.15 shall be deemed approved if the Board fails to act on the application or notice within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, the Board acts when it issues an order stating that the Board has approved or denied the application or notice, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(2) Complete record. For the purpose of computing the commencement of the 91-day period, the record is complete on the latest of:

(i) The date of receipt by the Board of an application or notice that has been accepted by the Reserve Bank;

(ii) The last day provided in any notice for receipt of comments and hearing requests on the application or notice;

(iii) The date of receipt by the Board of the last relevant material regarding the application or notice that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System; or

(iv) The date of completion of any hearing or other proceeding.

(f) Exceptions to notice and hearing requirements.

(1) Probable bank failure. If the Board finds it must act immediately on an application or notice in order to prevent the probable failure of a bank or bank holding company, the Board may modify or dispense with the notice and hearing requirements provided in this section.

(2) Emergency. If the Board finds that, although immediate action on an application or notice is not necessary, an emergency exists requiring expeditious action, the Board shall provide the primary supervisor 10 days to submit its recommendation. The Board may act on such an application or notice without a hearing and may modify or dispense with the other notice and hearing requirements provided in this section.

(g) Waiting period. A transaction approved under § 225.14 or § 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 (f) of this section that the application or notice involves a probable bank failure;

(2) On or after the 5th calendar day following the date of approval, in the event that the Board has determined under paragraph (f) of this section that an emergency exists requiring expeditious action; or

(3) On or after the 15th 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.

§ 225.17 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 67 percent of the shares of the bank would control, immediately after the reorganization, at least 67 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;[3/]

(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

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[3/] 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.

agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;[4/]

(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 principal 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;[5/]

(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 § 225.15 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;

[4/] 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.

[5/] 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 bank holding company formations (appendix C of this part).

(2) A list identifying all principal 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 principal 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 principal shareholder of the resulting bank holding company in any administrative or criminal proceeding; and

(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.

(c) Acknowledgment of notice. Within 7 calendar days following receipt of a notice under this section, the Reserve Bank shall provide the notificant with a written acknowledgment 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 § 225.15 of this subpart.

4. Subpart C is amended by revising §§ 225.21 through 225.25; and §§ 225.26 through 225.28 are added to read as follows:

Subpart C - Nonbanking Activities and Acquisitions by Bank Holding Companies

Subpart C—Nonbanking Activities and Acquisitions by Bank Holding Companies

§ 225.21 Prohibited Nonbanking Activities and Acquisitions; Exempt Bank Holding Companies.

(a) Prohibited nonbanking activities and acquisitions. Except as provided in § 225.22 of this subpart, a bank holding company or a subsidiary may not engage in, or acquire or control, directly or indirectly, voting securities or assets of a company engaged in, any activity other than:

(1) Banking or managing or controlling banks and other subsidiaries authorized under the BHC Act; and

(2) An activity that the Board determines to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, including any incidental activities that are necessary to carry on such an activity, if the bank holding company has obtained the prior approval of the Board for that activity in accordance with and subject to the requirements of this regulation.

(b) Exempt bank holding companies. The following bank holding companies are exempt from the provisions of this subpart:

(1) Family-owned companies. Any company that is a "company covered in 1970," as defined in section 2(b) of the BHC Act, more than 85 percent of the voting securities of which was collectively owned on June 30, 1968, and continuously thereafter, by members of the same family (or their spouses) who are lineal descendants of common ancestors.

(2) Labor, agricultural, and horticultural organizations. Any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501(c)).

(3) Companies granted hardship exemption. Any bank holding company that has controlled only one bank since before July 1, 1968, and that has been granted an exemption by the Board under section 4(d) of the BHC Act, subject to any conditions imposed by the Board.

(4) Companies granted exemption on other grounds. Any company that acquired control of a bank before December 10, 1982, without the Board's prior approval under section 3 of the BHC Act, on the basis of a narrow interpretation of the term demand deposit or commercial loan if the Board has determined that:

(i) Coverage of the company as a bank holding company under this subpart would be unfair or represent an unreasonable hardship; and

(ii) Exclusion of the company from coverage under this regulation is consistent with the purposes of the BHC Act and section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)). The provisions of § 225.4 of subpart A of this regulation are not applicable to a company exempt under this paragraph.

§ 225.22 Exempt nonbanking activities and acquisitions.

(a) Servicing activities. A bank holding company may, without the Board's prior approval under this subpart, furnish services to or perform services for, or establish or acquire a company that engages solely in furnishing services to or performing services for:

(1) The bank holding company or its subsidiaries in connection with their activities as authorized by law, including services that are necessary to fulfill commitments entered into by the subsidiaries with third parties, if the bank holding company or servicing company complies with the Board's published interpretations and does not act as principal in dealing with third parties; and

(2) The internal operations of the bank holding company or its subsidiaries. Services for the internal operations of the bank holding company or its subsidiaries include, but are not limited to:

(i) Accounting, auditing, and appraising;

(ii) Advertising and public relations;

(iii) Data processing and data transmission services, data bases or facilities;

(iv) Personnel services;

(v) Courier services;

(vi) Holding or operating property used wholly or substantially by a subsidiary in its operations or for its future use;

(vii) Liquidating property acquired from a subsidiary;

(viii) Liquidating property acquired from any sources either prior to May 9, 1956, or the date on which the company became a bank holding company, whichever is later; and

(ix) Selling, purchasing, or underwriting insurance such as blanket bond insurance, group insurance for employees, and property and casualty insurance.

(b) Safe deposit business. A bank holding company or nonbank subsidiary may, without the Board's prior approval, conduct a safe deposit business, or acquire voting securities of a company that conducts such a business.

(c) Nonbanking acquisitions not requiring prior Board approval. The Board's prior approval is not required under this subpart for the following acquisitions:

(1) DPC acquisitions. (i) Voting securities or assets, acquired by foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted (DPC property) in good faith, if the DPC property is divested within two years of acquisition.

(ii) The Board may, upon request, extend this two-year period for up to three additional one-year periods. The Board may permit additional extensions for up to 5 years (for a total of 10 years), for real estate or other assets that are demonstrated by the bank holding company to have value and marketability characteristics similar to real estate.

(iii) Transfers of DPC property within the bank holding company system do not extend any period for divestiture of the property.

(2) Securities or assets required to be divested by subsidiary. Voting securities or assets required to be divested by a subsidiary at the request of an examining federal or state authority (except by the Board under the BHC Act or this regulation), if the bank holding company divests the securities or assets within two years from the date acquired from the subsidiary.

(3) Fiduciary investments. Voting securities or assets acquired by a bank or other company (other than a trust that is a company) in good faith in a fiduciary capacity, if the voting securities or assets are:

(i) Held in the ordinary course of business; and

(ii) Not acquired for the benefit of the company or its shareholders, employees, or subsidiaries.

(4) Securities eligible for investment by a national bank. Voting securities of the kinds and amounts explicitly eligible by federal statute (other than section 4 of the Bank Service Corporation Act, 12 U.S.C. 1864) for investment by a national bank, and voting securities acquired prior to June 30, 1971, in reliance on section 4(c)(5) of the BHC Act and interpretations of the Comptroller of the Currency under section 5136 of the Revised Statutes (12 U.S.C. 24(7)).

(5) Securities or property representing 5 percent or less of a company. Voting securities of a company or property that, in the aggregate, represent 5 percent or less of the outstanding shares of any class of voting securities of a company or a 5 percent interest or less in the property, subject to the provisions of 12 CFR 225.137.

(6) Securities of investment company. Voting securities of an investment company that is solely engaged in investing in securities and that does not own or control more than 5 percent of the outstanding shares of any class of voting securities of any company.

(7) Assets acquired in the ordinary course of business. Assets of a company acquired in the ordinary course of business, subject to the provisions of 12 CFR 225.132, if the assets relate to activities in which the acquiring company has previously received Board approval under this regulation to engage.

(8) Asset acquisitions by a lending company or industrial bank. Assets of an office(s) of a company, all or substantially all of which relate to making, acquiring, or servicing loans if:

(i) The acquiring company has previously received Board approval under this regulation to engage in lending activities or industrial banking activities;

(ii) The assets acquired during any 12-month period do not represent more than 50 percent of the assets (on a consolidated basis) of the acquiring lending company or industrial bank, or more than $100 million, whichever amount is less;

(iii) The assets acquired do not represent more than 50 percent of the selling company's consolidated assets that are devoted to lending activities or industrial banking business;

(iv) The acquiring company notifies the Reserve Bank of the acquisition within 30 days after the acquisition; and

(v) The acquiring company, after giving effect to the transaction, meets the Board's capital adequacy guidelines (Appendix A of this part) and the Board has not previously notified the acquiring company that it may not acquire assets

under the exemption in this paragraph.

(d) Acquisition of securities by subsidiary banks. (1) National bank. A national bank or its subsidiary may, without the Board's approval under this subpart, acquire or retain securities on the basis of section 4(c)(5) of the BHC Act in accordance with the regulations of the Comptroller of the Currency.

(2) State bank. A state-chartered bank or its subsidiary may, insofar as federal law is concerned and without the Board's prior approval under this subpart:

(i) Acquire or retain securities, on the basis of section 4(c)(5) of the BHC Act, of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; or

(ii) Acquire or retain all (but, except for directors' qualifying shares, not less than all) of the securities of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(e) Activities and securities of new bank holding companies. A company that becomes a bank holding company may, for a period of two years, engage in nonbanking activities and control voting securities or assets of a nonbank subsidiary, if the bank holding company engaged in such activities or controlled such voting securities or assets on the date it became a bank holding company. The Board may grant requests for up to three one-year extensions of the two-year period.

(f) Grandfathered activities and securities. Unless the Board orders divestiture or termination under section 4(a)(2) of the BHC Act, a "company covered in 1970," as defined in section 2(b) of the BHC Act, may:

(1) Retain voting securities or assets and engage in activities that it has lawfully held or engaged in continuously since June 30, 1968; and

(2) Acquire voting securities of any newly formed company to engage in such activities.

(g) Securities or activities exempt under Regulation K. A bank holding company may acquire voting securities or assets and engage in activities as authorized in Regulation K (12 CFR Part 211).

§ 225.23 Expedited action for nonbanking proposals by well-run bank holding companies.

(a) Filing of notice. A bank holding company that meets the requirements of paragraph (b) of this section may satisfy the notice requirement of this subpart in connection with the acquisition of voting securities or assets of a company engaged in nonbanking activities by providing the appropriate Reserve Bank with a written notice containing the following:

(1) A certification that all of the criteria in paragraph (b) of this section are met;

(2) A description of the transaction that includes identification of the companies involved in the transaction, the activities to be conducted, and a commitment to conduct the proposed activities in conformity with the Board's regulations and orders governing the conduct of the proposed activity;

(3) In the event the proposal involves an acquisition of a going concern, a description of the funding for the transaction, a balance sheet for the acquiring bank holding company reflecting the pro forma effect of the acquisition, and the market indexes for each relevant banking market reflecting the pro forma effect of the acquisition; and

(4) A request or evidence of a request that the Board publish notice of the proposal in the Federal Register as provided in § 225.24(c)(1).

(b) Criteria for use of expedited procedure. The procedure in this subsection is available only if:

(1) Well capitalized organization.

(i) Bank holding company. Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well capitalized;[1/]

(ii) Insured depository institutions. Both at the time of and immediately after the transaction;

(A) The lead insured depository institution of the acquiring bank holding company is well capitalized;

[1/] For purposes of this paragraph, a bank holding company with assets under $150 million will be deemed to have met the requirements of this paragraph if the parent bank holding company's ratio of pro forma debt to equity is 1.0:1 or less and the proposal in all other respects meets the requirements of appendix C of this part.

(B) Well capitalized insured depository institutions control at least 80 percent of the total assets of insured depository institutions controlled by the acquiring bank holding company; and

(C) No insured depository institution controlled by the acquiring bank holding company is undercapitalized;

(2) Well managed organization. At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 80 percent of the total assets of insured depository institutions controlled by such holding company are well managed;

(3) Permissible activity.

(i) The Board has determined by regulation or order that each activity proposed to be conducted is so closely related to banking or managing or controlling banks as to be a proper incident thereto;[2/] and

(ii) The Board has not indicated that proposals to engage in the proposed activity are subject to the notice procedure provided in § 225.24.

(4) Competitive criteria.

(i) Competitive screen. In the case of the acquisition of a going concern, the acquisition, without regard to any divestitures proposed by the acquiring bank holding company, does not cause:

(A) The acquiring bank holding company to control in excess of 35 percent of the market share in any relevant market, or

(B) The Herfindahl-Hirschman index to increase by more than 200 points in any relevant market with a post-acquisition index of at least 1800;

(ii) Other competitive factors. The Board has not indicated that the transaction is subject to close scrutiny on competitive grounds;

(5) Size of acquisition. In the case of an acquisition, the book value of the aggregate risk-weighted assets acquired by the acquiring bank holding company in all transactions approved

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[2/] In the case of the acquisition of a savings association, the bank holding company and its subsidiary depository institutions must also meet the CRA requirements of § 225.14(b)(3).

during the previous 12 months under this section and § 225.14 does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company;

(6) Notification. The bank holding company has not been notified by the Board prior to the expiration of the period in subsection (d) that a notice under § 225.24 is required.

(c) Action on notice. The Board or the appropriate Reserve Bank shall act on a proposal submitted under this section or notify the bank holding company that the transaction is subject to the procedure in § 225.24 before the later of:

(1) 15 calendar days following the filing of all of the information required in paragraph (a) of this section; or

(2) 3 business days following the close of the public comment period;

(d) Acceptance of notice in event expedited procedure not available. In the event that the Board or the Reserve Bank determines after the filing of a notice under this section that a bank holding company may not use the procedure in this section and must file a notice under § 225.24, the notice shall be deemed accepted for purposes of § 225.24 as of the date that the notice was filed under this section.

§ 225.24 Procedures for other nonbanking proposals.

(a) Notice required for nonbanking activities. Except as provided in § 225.23, 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 § 225.28 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 § 225.28 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 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 § 225.28 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, or, in the event that the Board has previously determined by order that the activity is permissible for a bank holding company to conduct, a commitment to comply with all conditions and limitations that have been established by the Board governing the activity; and

(ii) The information required in paragraphs (a)(1) or (a)(2), 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.

(i) In a case involving an activity listed in § 225.28 or previously approved by the Board by order, the Reserve Bank shall

notify the Board for publication in the Federal Register immediately upon receipt by the Reserve Bank of:

(A) A notice under this section; or

(B) A written request that notice of a proposal under this section or § 225.23 be published in the Federal Register. Such a request may be made up to 30 calendar days prior to submission of a notice under this subpart.

(ii) The Federal Register notice published under this paragraph shall invite public comment on the proposal, generally for a period of 15 days.

(2) New activities.

(i) In general. In the case of a notice under this subpart involving an activity that is not listed in § 225.28 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 Banks shall—

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because action under delegated authority is not appropriate.

(ii) Return of incomplete notice. Within 7 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) Notice of action. The Reserve Bank shall promptly notify the bank holding company of any action, referral, or extension under this paragraph (1) of this section.

(iv) Close of public comment period. The Reserve Bank shall not approve any notice under this paragraph (1) of this section prior to the third 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 § 225.28, 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.

§ 225.25 Duration of approval, hearings, alteration of activities and other matters.

(a) Duration of approval. A bank holding company that receives approval pursuant to this subpart to engage de novo in a nonbanking activity may conduct that activity de novo at any time following the date approval is received so long as:

(1) At the time the activity is commenced, the bank holding company has one of the highest two composite inspection ratings and is adequately capitalized;

(2) Prior to commencing the activity, the Board has not informed the company that it may not commence the activity; and

(3) The order approving the activity does not specifically require that the activity be commenced within a given period.

(b) Hearings. (1) Procedure to request hearing. Any request for a hearing on a notice under this subpart 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 § 225.16(e) apply to notices under this subpart that involve hearings.

(c) Approval through failure to act.

(1) Except as provided in paragraph (b) of this section or paragraph 225.24(d)(4), 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.

(2) Complete notice. For purposes of paragraph (c) of this section, 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.

(d) Notice to expand or alter nonbanking activities. 1) De novo expansion. A notice under this subpart 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 this subpart 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 211) governs other international operations of bank holding companies.

(3) Alteration of nonbanking activity. Unless otherwise permitted by the Board, a notice under this subpart 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.

(e) 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 subpart if the Board finds that an emergency exists that requires the Board to act immediately and the primary federal regulator of the institution concurs.

§ 225.26 Factors Considered in Acting on Nonbanking Proposals.

(a) In general. In evaluating a notice under § 225.23 or § 225.24, 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, the effect of the proposed transaction on those resources, and the management expertise, internal control and risk management systems, and capital of the entity conducting the activity.

(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.

§ 225.27 Procedures for determining scope of nonbanking activities.

(a) Advisory opinions regarding the scope of permissible nonbanking activities. (1) Requests for an advisory opinion. Any person may submit a request to the Board for an advisory opinion regarding the scope any permissible nonbanking activity. The request must be submitted in writing to the Board and must identify the proposed parameters of the activity or a description of the service or product that is intended to be provided as well as an explanation supporting an interpretation regarding the scope of the permissible nonbanking activity.

(2) Response to a request. The Board shall provide an advisory opinion within 45 days of receiving a written request under this subsection.

(b) Procedure for consideration of new activities.

(1) Initiation of proceeding. The Board may at any time, on its own initiative or in response to a written request from any person, initiate a proceeding to determine whether any activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(2) Requests for determination. Any request that the Board consider that an activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto shall be submitted to the Board in writing and shall contain evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(3) Publication. The Board shall publish in the Federal Register notice that it is considering the permissibility of a

new activity and invite public comment for a period of at least 30 calendar days. In the case of a request submitted under paragraph (b) of this section, the Board may determine not to publish notice of the request if the Board determines that the requester has provided no reasonable basis for a determination that the activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto and notifies the requester of that determination.

(4) Comments and hearing requests. Any comment and any request for a hearing regarding a proposal under this section shall comply with the provisions of § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

§ 225.28 List of permissible nonbanking activities.

(a) Closely related nonbanking activities. The activities listed in paragraph (b) of this section are so closely related to banking or managing or controlling banks as to be a proper incident thereto and may be engaged in by a bank holding company or a subsidiary thereof in accordance with and subject to the requirements of this regulation.

(b) Activities determined by regulation to be permissible. (1) Extending credit and servicing loans. Making, acquiring, brokering or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others.

(2) Activities related to extending credit. Any activity usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit, as determined by the Board. The Board has determined that the following activities are usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit:

(i) Real estate and personal property appraising. Performing appraisals of real estate and tangible and intangible personal property, including securities.

(ii) Arranging commercial real estate equity financing. Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors, if the bank holding company and its affiliates do not have an interest in, or participate in managing or developing, a real estate project for which it arranges equity financing, and do not promote or sponsor the development of such property.

(iii) Check-guaranty services. Authorizing a subscribing merchant to accept personal checks tendered by the merchant's

customers in payment for goods and services and purchasing from the merchant validly authorized checks that are subsequently dishonored.

(iv) Collection agency services. Collecting overdue accounts receivable, either retail or commercial.

(v) Credit bureau services. Maintaining information related to the credit history of consumers and providing that information to a credit grantor who is considering a borrower's application for credit or who has extended credit to the borrower.

(vi) Asset management, servicing, and collection activities. Engaging under contract with a third party in asset management, servicing, and collection[3/] for assets of a type that an insured depository institution may originate and own, if the company does not engage in real property management or real estate brokerage services as part of these services.

(vii) Acquiring debt in default. Acquiring debt that is in default at the time of acquisition, if the company:

(A) Divests shares or assets securing debt in default that are not permissible investments for bank holding companies within the time period required for divestiture of property acquired in satisfaction of a debt previously contracted under § 225.12(b);[4/]

(B) Stands only in the position of a creditor and does not purchase equity of obligors of debt in default (other than equity that may be collateral for such debt); and

(C) Does not acquire debt in default secured by shares of a bank or bank holding company.

(viii) Real-estate settlement servicing. Providing real-estate settlement services.[5/]

[3/] Asset management services include acting as agent in the liquidation or sale of loans and collateral for loans, including real estate and other assets acquired through foreclosure or in satisfaction of debts previously contracted.

[4/] For this purpose, the divestiture period for property begins on the date that the debt is acquired regardless of when legal title to the property is acquired.

[5/] For purposes of this section, real-estate settlement services do not include providing title insurance as principal, agent or broker.

(3) Leasing personal or real property. Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if:

(i) The lease is on a nonoperating basis;[6/]

(ii) The initial term of the lease is at least 90 days;

(iii) In the case of leases involving real property:

(A) At the inception of the initial lease the effect of the transaction will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease from rental payments, estimated tax benefits and the estimated residual value of the property at the expiration of the initial lease; and

(B) The estimated residual value of property for purposes of paragraph (b)(3)(A) of this section shall not exceed 25 percent of the acquisition cost of the property to the lessor.

(4) Operating nonbank depository institutions.

(i) Industrial banking. Owning, controlling or operating an industrial bank, Morris Plan bank, or industrial loan company, so long as the institution is not a bank.

(ii) Operating a savings association. Owning, controlling or operating a savings association, if the savings association engages only in deposit-taking activities and lending and other activities that are permissible for bank holding companies under this subpart C.

(5) Trust company functions. Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the

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[6/] For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly: (1) provide for the servicing, repair, or maintenance of the leased vehicle during the lease term; (2) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (3) provide for the loan of an automobile during servicing of the leased vehicle; (4) purchase insurance for the lessee; or (5) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor. The bank holding company may arrange for a third party to provide these services or products.

manner authorized by federal or state law, so long as the company is not a bank for purposes of section 2(c) of the Bank Holding Company Act.

(6) Financial and investment advisory activities. Acting as investment or financial advisor to any person, including (without in any way limiting the foregoing):

(i) Serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(ii) Furnishing general economic information and advice, general economic statistical forecasting services and industry studies;

(iii) Providing advice in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions, and conducting financial feasibility studies;[7/]

(iv) Providing information, statistical forecasting and advice with respect to any transaction in foreign exchange, forward contracts, options, futures, swaps or similar transactions;

(v) Providing educational courses, and instructional materials to consumers on individual financial management matters; and

(vi) Providing tax-planning and tax-preparation services to any person.

(7) Agency transactional services for customer investments.

(i) Securities brokerage. Providing securities brokerage services, whether alone or in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing.

(ii) Riskless principal transactions. Buying and selling in the secondary market all types of securities on the order of customers as a "riskless principal" to the extent of engaging in

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[7/] Feasibility studies do not include assisting management with the planning or marketing for a given project or providing general operational or management advice.

a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer. This does not include:

(A) Selling bank-ineligible securities[8/] at the order of a customer that is the issuer of the securities or selling bank-ineligible securities in any transaction where the company has a contractual agreement to place the securities as agent of the issuer;

(B) Acting as a riskless principal in any transaction involving a bank-ineligible security for which the company or any of its affiliates makes a market;[9/]

(C) Engaging in any riskless principal transaction involving any bank-ineligible security carried in the inventory of the company or any of its affiliates;

(D) Acting as riskless principal in any transaction on behalf of any U.S. or foreign affiliate that engages in bank-ineligible securities underwriting and dealing.

(iii) Private placement services. Acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 (1933 Act) and the rules of the Securities and Exchange Commission (SEC) if the company does not purchase or repurchase for its own account the securities being placed, or hold in inventory unsold portions of issues of these securities.

(iv) Futures commission merchant. Acting as a futures commission merchant (FCM) for unaffiliated persons in the execution, clearance, or execution and clearance of futures contracts and options on futures contracts traded on an exchange in the United States or abroad if--

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[8/] A bank-ineligible security is any security that a State member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

[9/] A company or its affiliates may not enter quotes for specific bank-ineligible securities in any dealer quotation system in connection with the company's riskless principal transactions; except that the company or its affiliates may enter "bid" or "ask" quotations, or publish "offering wanted" or "bid wanted" notices on trading systems other than NASDAQ or an exchange, if company or its affiliate does not enter price quotations on different sides of the market for a particular security during any two day period.

(A) The activity is conducted through a separately incorporated subsidiary of the bank holding company, which may engage in activities other than FCM activities;

(B) The subsidiary does not become a clearing member of any exchange or clearing association that requires the parent corporation of the clearing member to also become a member of that exchange or clearing association, unless a waiver of the requirement is obtained; and

(C) In connection with clearing activities in which the subsidiary does not also execute the transaction, the clearing subsidiary--

(1) Does not serve as a primary or qualifying clearing firm for the customer; and

(2) Clears trades pursuant to customer and other agreements that grant the subsidiary the right to decline to accept those trades that the subsidiary has determined present unacceptable risks.

(v) Other transactional services. Providing to customers as agent transactional services with respect to any transaction described in paragraph (b)(8) of this section, that the company may engage in for its own account.

(8) Investment transactions as principal.

(i) Underwriting and dealing in government obligations and money market instruments. Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including banker's acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks.

(ii) Trading activities. Engaging as principal for the account of the bank holding company or any of its affiliates in transactions in:

(A) Foreign exchange, or

(B) Forward contracts, options, futures, swaps, and similar contracts, whether traded on exchanges or not, on any financial asset (including gold, silver, platinum or palladium),

nonfinancial asset, or group or index of value thereof, other than a bank ineligible security[10/], if:

(1) A state member bank is authorized to invest in the asset underlying the contract;

(2) The contract requires cash settlement; or

(3) The contract allows for assignment, termination or offset prior to delivery or expiration and the company makes every reasonable effort to avoid taking or making delivery.

(iii) Buying and selling bullion and related activities. Buying and selling gold, silver, platinum and palladium bars, rounds, bullion and coins for the company's own account and the account of others and providing incidental services such as arranging for the storage, safe custody, assaying and shipment of gold, silver, platinum and palladium.

(9) Management consulting and counseling activities.

(i) Management consulting.

(A) Providing management consulting advice[11/]:

(1) On any matter to unaffiliated depository institutions, including commercial banks, savings and loan associations, savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, industrial loan companies, trust companies and branches or agencies of foreign banks;

(2) On any financial, economic, accounting or audit matter to any other company.

(B) A company conducting management consulting activities under this subparagraph and any affiliate of such company may not--

(1) Own or control, directly or indirectly, more than 5 percent of the voting securities of the client institution; and

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[10/] A bank-ineligible security is any security that a State member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

[11/] In performing this activity, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.131).

(2) Allow a management official, as defined in 12 CFR 212.2(h), of the company or any of its affiliates to serve as a management official of the client institution, except where such interlocking relationship is permitted pursuant to an exemption granted under 12 CFR 212.4(b) or otherwise permitted by the Board.

(C) A company conducting management consulting activities may provide management consulting services to customers not described in paragraph (b)(9)(i)(A)(1) of this section or regarding matters not described in paragraph (b)(9)(i)(A)(2) if the total annual revenue derived from those management consulting services does not exceed 30 percent of the company's total annual revenue derived from management consulting activities.

(ii) Employee benefits consulting services. Providing consulting services to employee benefit, compensation and insurance plans, including designing plans, assisting in the implementation of plans, providing administrative services to plans, and developing employee communication programs for plans.

(iii) Career counseling services. Providing career counseling services to:

(A) A financial organization[12/] and individuals currently employed by, or recently displaced from, a financial organization;

(B) Individuals who are seeking employment at a financial organization; and

(C) Individuals who are currently employed in or who seek positions in the finance, accounting and audit departments of any company.

(10) Support services.

(i) Courier services. Providing courier services for--

(A) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

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[12/] The term financial organization refers to insured depository institution holding companies and their subsidiaries, other than nonbanking affiliates of diversified savings and loan holding companies that engage in activities not permissible under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842 (c)(8)).

(B) Audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[13/]

(ii) Printing and selling MICR-encoded items. Printing and selling checks and related documents, including corporate image checks, cash tickets, voucher checks, deposit slips, savings withdrawal packages, and other forms that require Magnetic Ink Character Recognition (MICR) encoding.

(11) Insurance agency and underwriting.

(i) Credit insurance. Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is--

(A) directly related to an extension of credit by the bank holding company or any of its subsidiaries; and

(B) limited to ensuring the repayment of the outstanding balance due on the extension of credit[14/] in the event of the death, disability, or involuntary unemployment of the debtor.

(ii) Finance company subsidiary. Acting as agent or broker for insurance directly related to an extension of credit by a finance company[15/] that is a subsidiary of a bank holding company, if:

(A) The insurance is limited to ensuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

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[13/] See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for bank holding company entry into the activity.

[14/] "Extension of credit" includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full-payout leases that meet the requirements of paragraph (b)(5) of this section.

[15/] "Finance company" includes all non-deposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual states as finance companies and that engage in a significant degree of consumer lending.

(B) The extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of a residential manufactured home[16/] and the credit is secured by the home; and

(C) The applicant commits to notify borrowers in writing that:

(1) They are not required to purchase such insurance from the applicant;

(2) Such insurance does not insure any interest of the borrower in the collateral; and

(3) The applicant will accept more comprehensive property insurance in place of such single-interest insurance.

(iii) Insurance in small towns. Engaging in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that:

(A) Has a population not exceeding 5,000 (as shown in the preceding decennial census); or

(B) Has inadequate insurance agency facilities, as determined by the Board, after notice and opportunity for hearing.

(iv) Insurance-agency activities conducted on May 1, 1982. Engaging in any specific insurance-agency activity[17/] if the bank holding company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.[18/] A

[16/] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

[17/] Nothing contained in this provision shall preclude a bank holding company subsidiary that is authorized to engage in a specific insurance-agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes and prior notice has been provided to the Board.

[18/] For the purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

bank holding company or subsidiary engaging in a specific insurance agency activity under this clause may:

(A) Engage in such specific insurance agency activity only at locations--

(1) In the state in which the bank holding company has its principal place of business (as defined in 12 U.S.C. 1842(d));

(2) In any state or states immediately adjacent to such state; and

(3) In any state in which the specific insurance-agency activity was conducted (or was approved to be conducted) by such bank holding company or subsidiary thereof or by any other subsidiary of such bank holding company on May 1, 1982; and

(B) Provide other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982, by such bank holding company or subsidiary.

(v) Supervision of retail insurance agents. Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell--

(A) Fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or its subsidiaries; and

(B) Group insurance that protects the employees of the bank holding company or its subsidiaries.

(vi) Small bank holding companies. Engaging in any insurance-agency activity if the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance-agency activities under this paragraph may not engage in the sale of life insurance or annuities except as provided in paragraphs (b)(11)(i) and (iii) of this section, and it may not continue to engage in insurance-agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the holding company and its subsidiaries exceed $50 million.

(vii) Insurance-agency activities conducted before 1971. Engaging in any insurance-agency activity performed at any location in the United States directly or indirectly by a bank holding company that was engaged in insurance-agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

(12) Community development activities. (i) Financing and investment activities. Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(ii) Advisory activities. Providing advisory and related services for programs designed primarily to promote community welfare.

(13) Money orders, savings bonds, and traveler's checks. The issuance and sale at retail of money orders and similar consumer-type payment instruments; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

(14) Data processing. (i) Providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, advice and access to such services, facilities, or data bases by any technological means, if:

(A) the data to be processed or furnished are financial, banking, or economic; and

(B) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(ii) A company conducting data processing and data transmission activities may conduct data processing and data transmission activities not described in paragraph (b)(14)(i)(A) if the total annual revenue derived from those data processing and data transmission activities does not exceed 30 percent of the company's total annual revenues derived from data processing and data transmission activities.

5. Subpart E is amended by revising §§ 224.41 through 225.43; and § 225.44 is added to read as follows:

Subpart E - Change in Bank Control

§ 225.41 Transactions requiring prior notice.

(a) Prior notice requirement. Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the Board 60 days written notice, as specified in § 225.43 of this subpart, before acquiring control of a state member bank or bank holding company, unless the acquisition is exempt under § 225.42.

(b) Definitions. For purposes of this subpart:

(1) Acquisition includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a state member bank or a bank holding company resulting from a redemption of voting securities.

(2) Acting in concert includes knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a state member bank or bank holding company whether or not pursuant to an express agreement.

(3) Immediate family includes a person's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person's spouse.

(c) Acquisitions requiring prior notice.

(1) Acquisition of control. The acquisition of voting securities of a state member bank or bank holding company constitutes the acquisition of control under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 25 percent or more of any class of voting securities of the institution.

(2) Rebuttable presumption of control. The Board presumes that an acquisition of voting securities of a state member bank or bank holding company constitutes the acquisition of control under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution, and if:

(i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction.[1/]

(d) Rebuttable presumption of concerted action. The following persons shall be presumed to be acting in concert for purposes of this subpart:

(1) A company and any controlling shareholder, partner, trustee, or management official of such company if both the company and the person own voting securities of the state member bank or bank holding company;

(2) An individual and the individual's immediate family;

(3) Companies under common control;

(4) Persons who are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a state member bank or bank holding company, other than through a revocable proxy as described in § 225.42(a)(5) of this subpart;

(5) Persons that have made, or propose to make, a joint filing under sections 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission; and

(6) A person and any trust for which such person serves as trustee.

(e) Acquisitions of loans in default. The Board presumes an acquisition of a loan in default that is secured by voting securities of a state member bank or bank holding company to be an acquisition of the underlying securities for purposes of this section.

(f) Other transactions. Transactions other than those set forth in subsection (c) of this section resulting in a person's control of less than 25 percent of a class of voting securities of a state member bank or bank holding company are not deemed by the Board to constitute control for purposes of the Bank Control Act.

[1/] If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting securities of the state member bank or bank holding company, each such person must file prior notice to the Board.

(g) Rebuttal of presumptions. Prior notice to the Board is not required for any acquisition of voting securities under the presumption of control set forth in this section, if the Board finds that the acquisition will not result in control. The Board will afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

§ 225.42 Transactions not requiring prior notice.

(a) Exempt transactions. The following transactions do not require notice to the Board under this subpart:

(1) Existing control relationships. The acquisition of additional voting securities of a state member bank or bank holding company by a person who:

(i) continuously since March 9, 1979 (or since that institution commenced business, if later), held power to vote 25 percent or more of any class of voting securities of that institution; or

(ii) is presumed, under § 225.41(c)(2) of this subpart, to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent or more of any class of voting securities of the institution or, in other cases, where the Board determines that the person has controlled the bank continuously since March 9, 1979;

(2) Increase of previously authorized acquisitions. Unless the Board or the Reserve Bank otherwise provides in writing, the acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 225.41(c) of this subpart) after complying with the procedures and receiving approval to acquire voting securities of the institution under this subpart or in connection with an application approved under section 3 of the BHC Act (12 U.S.C. 1842; § 225.11 of subpart B) or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c));

(3) Acquisitions subject to approval under BHC Act or Bank Merger Act. Any acquisition of voting securities subject to approval under section 3 of the BHC Act (12 U.S.C. 1842; § 225.11 of subpart B), or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c)).

(4) Transactions exempt under BHC Act. Any transaction described in sections 2(a)(5), 3(a)(A), or 3(a)(B) of the BHC Act

(12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B)), by a person described in those provisions;

(5) Proxy solicitation. The acquisition of the power to vote securities of a state member bank or bank holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purposes of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting;

(6) Stock dividends. The receipt of voting securities of a state member bank or bank holding company through a stock dividend or stock split if the proportional interest of the recipient in the institution remains substantially the same; and

(7) Acquisition of foreign banking organization. The acquisition of voting securities of a qualifying foreign banking organization. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 U.S.C. 1817(j)(9), (10), and (12) and § 225.44 of this subpart.)

(b) Prior notice exemption.

(1) The following acquisitions of voting securities of a state member bank or bank holding company, which would otherwise require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate Reserve Bank within 90 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank:

(i) The acquisition of voting securities through inheritance;

(ii) The acquisition of voting securities as a bona fide gift; and

(iii) The acquisition of voting securities in satisfaction of a debt previously contracted (DPC) in good faith.

(2) The following acquisitions of voting securities of a state member bank or bank holding company which would otherwise require prior notice under this subpart are not subject to the prior notice requirements if the acquiring person does not reasonably have advance knowledge of the transaction, and provides the written notice required under section 225.43 to the appropriate Reserve Bank within 90 calendar days after the transaction occurs:

(i) the acquisition of voting securities resulting from a redemption of voting securities by the issuing bank or bank holding company; and

(ii) the acquisition of voting securities as a result of actions (including the sale of securities) by any third party that is not within the control of the acquiror.

(3) Nothing in subsections (b)(1) or (b)(2) limits the authority of the Board to disapprove a notice pursuant to § 225.43(h) of this subpart.

§ 225.43 Procedures for filing, processing, publishing, and acting on notices.

(a) Filing notice.

(1) A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain all the information required by paragraph 6 of the Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated Board form.

(2) The Board may waive any of the informational requirements of the notice if the Board determines that it is in the public interest.

(3) A notificant must notify the appropriate Reserve Bank or the Board immediately of any material changes in a notice submitted to the Reserve Bank, including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated Board form, together with a statement of any material changes since the date of the statement or summary. The Reserve Bank or the Board, nevertheless, may request additional information if appropriate.

(b) Acceptance of notice. The 60-day notice period specified in § 225.41 of this subpart shall commence on the date of receipt of a complete notice. The Reserve Bank shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is or was complete and thereby accepted for processing. The Reserve Bank or the Board may request additional relevant information at any time after the date of acceptance.

(c) Publication.

(1) Newspaper Announcement. Any person(s) filing a notice under this subpart must publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office

of the state member bank to be acquired is located or, in the case of a proposed acquisition of a bank holding company, in the community in which its head office is located and in the community in which the head office of each of its subsidiary banks is located. The announcement must be published no earlier than 30 calendar days prior to the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after the filing date, and the publisher's affidavit of a publication must be provided to the appropriate Reserve Bank.

(2) Contents of newspaper announcement. The newspaper announcement shall state:

(i) The name of each person identified in the notice as a proposed acquiror of the bank or bank holding company;

(ii) The name of the bank or bank holding company to be acquired, including, in the case of a bank holding company, the name of each of its subsidiary banks; and

(iii) A statement that interested persons may submit comments on the notice to the Board or the appropriate Reserve Bank for a period of 20 days or such shorter period as may be provided pursuant to subsection (c)(5) of this section.

(3) Federal Register announcement. The Board will, upon filing of a notice under this subpart, publish announcement in the Federal Register of receipt of the notice. The Federal Register announcement will contain the information required under paragraphs (c)(2)(i) and (c)(2)(ii) of this section and a statement that interested persons may submit comments on the proposed acquisition for a period of 15 calendar days or such shorter period as may be provided pursuant to subsection (c)(5) of this section. The Board may waive publication in the Federal Register if the Board determines that such action is appropriate.

(4) Delay of publication. The Board may permit delay in the publication required under subsections (c)(1) and (c)(3) of this section if the Board determines, for good cause shown, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate Reserve Bank.

(5) Shortening or waiving notice. The Board may shorten or waive the public comment requirements or this subsection, waive the newspaper publication requirements of this subsection, or act on a notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

(6) Consideration of public comments. In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or Federal Register announcement, whichever is later. At the Board's option, comments received after this period may, but need not, be considered.

(7) Standing. No person (other than the acquiring person) who submits comments or information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

(d) Time period for Board action.

(1) Consummation of acquisition.

(i) The notificant(s) may consummate the proposed acquisition 60 days after submission to the Reserve Bank of a complete notice under subsection (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period as provided under subsection (d)(2) of this section.

(ii) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the Board notifies the notificant(s) in writing of the Board's intention not to disapprove the acquisition.

(2) Extensions of time period.

(i) The Board may extend the 60-day period in subsection (d)(1) of this section for an additional 30 days by notifying the acquiring person(s).

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each if the Board determines that:

(A) Any acquiring person has not furnished all the information required under subsection (a) of this section;

(B) Any material information submitted is substantially inaccurate;

(C) The Board is unable to complete the investigation of an acquiring person because of inadequate cooperation or delay by that person; or

(D) Additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with

the requirements of the Bank Secrecy Act, subchapter II of Chapter 53 of Title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefore and shall include a statement of the information, if any, deemed incomplete or inaccurate.

(e) Advice to bank supervisory agencies.

(1) Upon accepting a notice relating to acquisition of securities of a state member bank, the Reserve Bank shall send a copy of the notice to the appropriate state bank supervisor, which shall have 30 calendar days from the date the notice is sent in which to submit its views and recommendations to the Board. The Reserve Bank also shall send a copy of any notice to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

(2) If the Board finds that it must act immediately in order to prevent the probable failure of the bank or bank holding company involved, the Board may dispense with or modify the requirements for notice to the state supervisor.

(f) Investigation and report.

(1) After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under subsection (a) of this section. In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any bank or bank holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

(g) Factors considered in acting on notices. In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice.

(h) Disapproval and hearing.

(1) Disapproval of notice. The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors set forth in paragraph 7 of the Bank Control Act (12 U.S.C. 1817(j)(7)) (i.e., competitive, financial, managerial, banking or incompleteness of information).

(2) Disapproval notification. Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action.

(3) Hearing. Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR part 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

§ 225.44 Reporting of stock loans.

(a) Requirements.

(1) Any financial institution and any affiliate of a financial institution that has credit outstanding to any person or group of persons, in the aggregate, which is secured, directly or indirectly, by 25 percent or more of any class of voting securities of a state member bank must file a consolidated report with the appropriate Reserve Bank for the state member bank.

(2) The financial institution also must file a copy of the report with its appropriate Federal banking agency.

(3) Any shares of the state member bank held by the financial institution or any of its affiliates as principal must be included in the calculation of the number of shares in which the financial institution or its affiliates has a security interest for purposes of subsection (a) of this section.

(b) Definitions. For purposes of subsection (a) of this section:

(1) Financial institution includes any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) and any foreign bank that is subject to the provisions of the BHC Act pursuant to section 8 of the International Banking Act (12 U.S.C. 3106).

(2) Credit outstanding includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to the person or group of persons.

(3) Group of persons includes any number of persons that the financial institution has reason to believe:

(i) Are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same depository institution at approximately the same time under substantially the same terms; or

(ii) Have made, or propose to make, a joint filing under section 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission regarding ownership of the shares of the same insured depository institution.

(c) Exceptions. Compliance with subsection (a) of this section is not required if:

(1) The person or group of persons referred to in that subsection has disclosed the amount borrowed and the security interest therein to the Board or appropriate Reserve Bank in connection with a notice filed under § 225.41 of this subpart or another application filed with the Board or Reserve Bank as a substitute for a notice under § 225.41 of this subpart, including an application filed under section 3 of the BHC Act (12 U.S.C. 1842) or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c)), or an application for membership in the Federal Reserve System; or

(2) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more; or, if the transaction involves stock issued by a newly chartered bank, before the bank is opened for business.

(d) Report Requirements.

(1) The consolidated report must indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the financial institution and any affiliate of the financial institution.

(2) Financial institutions must file the consolidated report in writing within 30 days of the date on which the financial institution or any affiliate first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a state member bank.

(e) Other reporting requirements. A state member bank that is required to report to another Federal banking agency credit outstanding that is secured by the shares of an insured depository institution also must file a copy of the report with the appropriate Reserve Bank.

6. Subpart G is amended by revising the heading to read as follows:

Subpart G--Appraisal Standards for Federally Related Transactions

7. Subpart H is amended by revising §§ 225.71 through 225.73 to read as follows:

Subpart H—Notice of Addition or Change of Directors and Senior Executive Officers

§ 225.71 Definitions.

(a) Senior executive officer means a person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions: president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. Senior executive officer also includes any other person identified by the Board or Reserve Bank, whether or not hired as an employee, with significant influence over major policymaking decisions of the state member bank or bank holding company.

(b) Director means a person who serves on the board of directors of a state member bank or bank holding company, except that this term does not include an advisory director who:

(1) Is not elected by the shareholders of the state member bank or bank holding company;

(2) Is not authorized to vote on any matters before the board of directors;

(3) Solely provides general policy advice to the board of directors and any committee thereof; and

(4) Has not been identified by the Board or Reserve Bank as a person who performs the functions of a director for purposes of this subpart.

(c) Troubled condition for a state member bank or bank holding company means an institution that:

(1) Has a composite rating, as determined in its most recent report of examination or inspection, of 4 or 5 under the

commercial bank Uniform Interagency Bank Rating System or under the Federal Reserve Bank Holding Company Rating System;

(2) Is subject to a cease-and-desist order or formal written agreement that requires action to improve the financial condition of the institution, unless otherwise informed in writing by the Board or Reserve Bank; or

(3) Is informed in writing by the Board or Reserve Bank that it is in troubled condition for purposes of the requirements of this subpart on the basis of the institution's most recent report of condition or report of examination or inspection, or other information available to the Board or Reserve Bank.

§ 225.72--Director and officer appointments; prior notice requirement.

(a) Prior notice by institution. (1) A state member bank or bank holding company shall give the Board 30 days' written notice, as specified in § 225.73, before adding or replacing any member of its board of directors, employing any person as a senior executive officer of the state member bank or bank holding company, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

(i) The state member bank has operated under its charter for less than two years;

(ii) The state member bank or bank holding company has undergone a change in control within the preceding two years that required a notice to be filed pursuant to the Change in Bank Control Act or subpart E of this part;

(iii) The bank holding company became a registered bank holding company within the preceding two years, unless:

(A) The bank holding company is owned or controlled by a registered bank holding company; or

(B) The bank holding company was formed in a reorganization in which substantially all shareholders of the bank holding company were shareholders of its subsidiary bank prior to the bank holding company's formation; or

(iv) The state member bank or bank holding company is not in compliance with all minimum capital requirements applicable to the institution as determined on the basis of the institution's most recent report of condition or report of examination or inspection, or is otherwise in troubled condition.

(2) A state member bank will be considered to have operated under its charter for more than two years for purposes of § 225.72(a)(1)(i) if:

(i) In a charter conversion, the predecessor insured depository institution operated under its charter for at least two years; or

(ii) The state member bank was chartered solely to facilitate the acquisition of another insured depository institution that operated under its charter for at least two years.

(b) Prior notice by an individual. The prior notice required by paragraph (a) of this section may be provided by an individual seeking election to the board of directors of a state member bank or bank holding company who has not been proposed by management.

§ 225.73 Procedures for filing, processing, and acting on notices; standards for disapproval; waiver of notice.

(a) Filing notice. (1) Content. The notice required in § 225.72 shall be filed with the appropriate Reserve Bank and shall contain:

(i) The information required by paragraph 6(A) of the Change in Bank Control Act (12 U.S.C. 1817(j)(6)(A)) as may be prescribed in the designated Board form;

(ii) Additional information consistent with the Federal Financial Institutions Examination Council's Joint Statement of Guidelines on Conducting Background Checks and Change in Control Investigations as set forth in the designated Board form; and

(iii) Such other information as may be required by the Board or Reserve Bank.

(2) Modification. The Reserve Bank may modify or accept other information in place of the requirements of § 225.73(a)(1) for a notice filed under this subpart.

(3) Acceptance of notice. The 30-day notice period specified in § 225.72 shall begin on the date all information required to be submitted by the notificant pursuant to § 225.73(a)(1) is received by the appropriate Reserve Bank. The Reserve Bank shall notify the state member bank or bank holding company or individual submitting the notice of the date on which all required information is received and the notice is accepted for processing, and of the date on which the 30-day notice period will expire.

(b) Commencement of service. (1) At expiration of period. A proposed director or senior executive officer may begin service after the end of the 30-day period which begins on the day that a complete notice under paragraph (a) of this section has been accepted by the Reserve Bank unless the Board or Reserve Bank issues a notice of disapproval of the proposed addition or employment before the end of the 30-day period.

(2) Prior to expiration of period. A proposed director or senior executive officer may begin service before the expiration of the 30-day period if the Board or the Reserve Bank notifies in writing the state member bank or bank holding company or individual submitting the notice of the Board's or Reserve Bank's intention not to disapprove the addition or employment.

(c) Notice of disapproval. The Board or Reserve Bank shall disapprove a notice under § 225.72 if the Board or Reserve Bank finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of the depositors of the state member bank or in the best interests of the public to permit the individual to be employed by, or associated with, the state member bank or bank holding company. The notice of disapproval shall contain a statement of the basis for disapproval and shall be sent to the state member bank or bank holding company and the disapproved individual.

(d) Appeal of a notice of disapproval. (1) A disapproved individual or a state member bank or bank holding company that has submitted a notice that is disapproved under this section may appeal the disapproval to the Board within 15 days of the effective date of the notice of disapproval. An appeal shall be in writing and explain the reasons for the appeal and include all facts, documents, and arguments that the appealing party wishes to be considered in the appeal, and state whether the appealing party is requesting an informal hearing.

(2) Written notice of the final decision of the Board shall be sent to the appealing party within 60 days of the receipt of an appeal, unless the appealing party's request for an informal hearing is granted.

(3) The disapproved individual may not serve as a director or senior executive officer of the state member bank or bank holding company while the appeal is pending.

(e) Informal hearing. (1) An individual, state member bank or bank holding company whose notice under this section has been disapproved may request an informal hearing on the notice. A request for an informal hearing shall be in writing and shall be submitted within 15 days of a notice of disapproval. The Board may, in its sole discretion, order an informal hearing if

the Board finds that oral argument is appropriate or necessary to resolve disputes regarding material issues of fact.

(2) An informal hearing shall be held within 30 days of a request, if granted, unless the requesting party agrees to a later date.

(3) Written notice of the final decision of the Board shall be given to the individual and the state member bank or bank holding company within 60 days of the conclusion of any informal hearing ordered by the Board unless the requesting party agrees to a later date.

(f) Waiver of notice. (1) Waiver requests. The Board or Reserve Bank may permit an individual to serve as a senior executive officer or director before the notice required under this subpart is provided, if the Board or Reserve Bank finds that:

(i) Delay would threaten the safety or soundness of the state member bank or bank holding company or any of its subsidiary banks;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) Automatic waiver. An individual who is not proposed by the management of a state member bank or bank holding company and who is elected as a new member of the board of directors at a meeting of the state member bank or bank holding company may serve as a director and may comply with the notice requirements of § 225.72(a) by providing to the appropriate Reserve Bank all the information required in § 225.73(a) within two (2) business days after the individual's election.

(3) Effect on disapproval authority. Any waiver granted under this section shall not affect the authority of the Board or Reserve Bank to issue a notice of disapproval within 30 days after such waiver.

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8. Under Interpretations, § 225.125 is amended by revising paragraphs (f) and (g) to read as follows:

§ 225.125 Investment adviser activities

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(f) In the Board's opinion, the Glass-Steagall Act provisions, as interpreted by the U.S. Supreme Court, forbid a bank holding company to sponsor, organize or control a mutual fund. However, the Board does not believe that such restrictions apply to closed-end investment companies as long as such companies are not primarily or frequently engaged in the issuance, sale and distribution of securities. A bank holding company should not act as investment adviser to an investment company which has a name that is similar to the name of the holding company or any of its subsidiary banks unless the prospectus of the investment company contains the disclosures required in paragraph (h) below. In no case should a bank holding company act as investment adviser to an investment company which has either a name that is the same as the name of the holding company or any of its subsidiary banks, or a name that contains the word "bank".

(g) In view of the potential conflicts of interests that may exist, a bank holding company and its bank and nonbank subsidiaries should not purchase in their sole discretion in a fiduciary capacity (including as managing agent) securities of any investment company for which the bank holding company acts as investment adviser unless the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.

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9. Appendix C is revised to read as follows:

APPENDIX C TO PART 225 -- SMALL BANK HOLDING COMPANY POLICY STATEMENT

Policy Statement on Assessment of Financial Factors

In acting on applications filed under the Bank Holding Company Act, the Board has adopted, and continues to follow, the principle that bank holding companies should serve as a source of strength for their subsidiary banks. When bank holding companies incur debt and rely upon the earnings of their subsidiary banks as the means of repaying such debt, a question arises as to the probable effect upon the financial condition of the company and its subsidiary bank or banks.

The Board believes that a high level of debt at the parent holding company level impairs the ability of a bank holding company to provide financial assistance to its subsidiary bank(s) and in some cases the servicing requirements on such debt may be a significant drain on the resources of the bank(s). For these reasons the Board has not favored the use of acquisition debt in the formation of bank holding companies or in the acquisition of additional banks. Nevertheless, the Board has recognized that

the transfer of ownership of small banks often requires the use of acquisition debt. The Board therefore has permitted the formation and expansion of small-bank holding companies with debt levels higher than would be permitted for larger holding companies. Approval of these applications has been given on the condition that the small-bank holding companies demonstrate the ability to service the acquisition debt without straining the capital of their subsidiary bank(s) and, further, that such companies restore their ability to serve as a source of strength for their subsidiary bank(s) within a relatively short period of time.

In the interest of furthering its policy of facilitating the transfer of ownership in banks without diluting bank safety and soundness, the Board has, as described below, adopted certain revisions to its procedures and standards for the formation and expansion of small bank holding companies.

A. Size criterion and grandfathering: This policy applies only to bank holding companies with pro forma consolidated assets of less than $150 million that: (i) are not engaged in nonbank activity involving significant leverage[1/]; and (ii) do not have a significant amount of outstanding debt that is held by the general public. Small-bank holding companies formed before the effective date of this policy may switch to a plan that adheres to the intent of this policy provided they comply with the requirements set forth under paragraphs C., D.2, D.3, and D.4 below.

B. The two categories of small bank holding company proposals:

Category I (low leverage) proposal: A proposal in which the parent bank holding company has a pro-forma debt-equity ratio of 1.0:1 or less and meets all applicable requirements of this policy statement;

Category II (highly leveraged or other) proposal: A proposal in which the parent bank holding company has a pro-forma debt-equity ratio of greater than 1.0:1, or any proposal by a small bank holding company under Section 3 of the Bank Holding Company Act that does not meet one of the applicable requirements of this policy statement.

C. Examination ratings and bank capitalization: Generally, the Board expects that an applicant's existing and proposed subsidiary bank(s) will have satisfactory examination

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[1/]A bank holding company that is engaged in significant off-balance sheet activities would generally be deemed to be engaged in activities that involve significant leverage.

ratings and be well managed, and that all present and proposed bank subsidiaries will be designated well-capitalized. Although the Board recognizes that there may be instances in which proposals merit favorable consideration despite the failure to meet these and the other requirements of this policy statement, such proposals will be subject to more intense evaluation and will not be subject to the expedited procedures set forth in Regulation Y that apply to Category I (low leverage) proposals. Proposals involving de novo banks or those that otherwise have not been examined would be processed as Category II (highly leveraged) proposals.

D. Other financial considerations: In evaluating applications filed pursuant to section 3 of the Bank Holding Company Act, as amended, when an applicant intends to incur debt to finance the acquisition of a small bank or banks, the Board will continue to take into account a full range of financial and other information about the applicant, and its current and proposed subsidiary bank(s), including the recent trend and stability of earnings, past and prospective growth, asset quality, the ability to meet debt servicing requirements without placing an undue strain on the resources of the bank(s), and the record and competency of management. In addition, the Board will require applicants to meet the minimum requirements set forth below. As a general rule, failure to meet any of these requirements will result in denial of the application; however, the Board reserves the right to make exceptions if the circumstances warrant.

1. Minimum down payment: The amount of acquisition debt should not exceed 75 percent of the purchase price of the bank(s) to be acquired. When the owner(s) of the holding company incur debt to finance the purchase of the bank(s), such debt will be considered acquisition debt even though it does not represent an obligation of the bank holding company, unless the owner(s) can demonstrate that such debt can be serviced without reliance on the resources of the bank(s) or bank holding company.

2. Capital adequacy: Each subsidiary bank of a small bank holding company subject to this policy statement is expected to maintain a well-capitalized designation.

3. Reduction in parent company leverage: Small-bank holding companies subject to this policy statement are to reduce their parent company debt to equity ratios consistent with the statutory requirement that all debt be retired within 25 years of being incurred. The Board also generally expects that small bank holding companies reach a debt to equity level of 30 percent or less within 12 years of the incurrence of the debt. The holding company must also

safely meet debt servicing and other requirements imposed by its creditors.[2/]

4. Dividend restrictions: A small bank holding company with a Category II (highly leveraged) proposal as described above is not expected to pay corporate dividends on common stock until such time as it reduces its debt to equity ratio to 1.0:1 or less and otherwise qualifies as a Category I (low leverage) proposal.[3/]

[2/]The term debt, as used in the ratio of debt to equity, means any borrowed funds (exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

The term equity, as used in the ratio of debt to equity, means the total stockholders' equity of the bank holding company adjusted to reflect the periodic amortization of "goodwill" (defined as the excess of cost of any acquired company over the sum of the amounts assigned to identifiable assets acquired, less liabilities assumed) in accordance with generally accepted accounting principles. In determining the total amount of stockholders' equity, the bank holding company should account for its investments in the common stock of subsidiaries by the equity method of accounting.

Ordinarily the Board does not view redeemable preferred stock as a substitute for common stock in a small-bank holding company. Nevertheless, to a limited degree and under certain circumstances, the Board will consider redeemable preferred stock as equity in the capital accounts of the holding company if the following conditions are met: (1) the preferred stock is redeemable only at the option of the issuer and (2) the debt to equity ratio of the holding company would be at or remain below 30 percent following the redemption or retirement of any preferred stock. Preferred stock that is convertible into common stock of the holding company may be treated as equity.

[3/] Dividends may be paid by small bank holding companies with debt to equity at or below 1.0:1 if the dividends are reasonable in amount, do not adversely affect the ability of the bank holding company to service its debt in an orderly manner, and do not adversely affect the ability of the subsidiary bank(s) to maintain well-capitalized designations. It is expected that dividends will be eliminated if the holding company is not meeting the projections, made at the time the application was filed, regarding the ability of the holding company to reduce the debt to equity ratio to 30 percent within 12 years of consummation of the proposal.

E. Subsequent acquisitions: Small bank holding companies may make acquisitions of additional banks after their formation if they continue to meet the requirements of this policy statement and other relevant statutory factors. It is expected that expanding small bank holding companies will be in satisfactory financial condition and well managed. Small bank holding companies whose expansion proposals otherwise qualify as Category I (low leverage) proposals must also be rated BOPEC composite 1-S or 2-S as of their most recent inspection in order to qualify for the expedited processing procedures. Proposals from unrated small bank holding companies will be subject to a more intense review and, therefore, will not be eligible for the expedited procedures.

By order of the Board of Governors of the Federal Reserve System, August 28, 1996.

William W. Wiles
Secretary of the Board
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