FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket Nos. R-0935; R-0936]

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

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted comprehensive amendments to Regulation Y that improve the competitiveness of bank holding companies by eliminating unnecessary regulatory burden and operating restrictions, and by streamlining the application/notice process. Among other revisions, the final rule incorporates a streamlined and expedited review process for bank acquisition proposals by well-run bank holding companies with a number of modifications intended to broaden and improve public notice of bank acquisition proposals, to assure that the regulatory filing is made well within the public comment period, and to better assure that proposals reviewed under the streamlined procedures do not raise issues under the statutory factors in the Bank Holding Company Act.

The final rule also implements the changes enacted in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 that eliminate certain notice and approval requirements and streamline others that involve nonbanking proposals by well-run bank holding companies. The final rule also includes a reorganized and expanded regulatory list of permissible nonbanking activities and removes a number of restrictions on those activities that are outmoded, have been superseded by Board order or do not apply to insured banks that conduct the same activity.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 final rule incorporates 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 included 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.

EFFECTIVE DATE: April 21, 1997.

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SUPPLEMENTAL INFORMATION:

Background and Summary of Final Action

On August 28, 1996, the Board proposed comprehensive revisions to Regulation Y designed to eliminate unnecessary regulatory burden and paperwork, improve efficiency and eliminate unwarranted constraints on credit availability while faithfully implementing the statutory requirements that form the bases for Regulation Y. (61 FR 47242 (September 6, 1996)). The Board proposed these revisions after conducting the review of its regulations required by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 ("Riegle Act"). Regulation Y governs the corporate practices and nonbanking activities of bank holding companies, sets forth the procedures for a company to become a bank holding company and for a bank holding company to seek Federal Reserve System ("System") approval for a bank acquisition or a nonbanking proposal under the Bank Holding Company Act ("BHC Act"), implements the prohibitions on tying, implements the prior notice requirements of the Change in Bank Control Act (governing the acquisition of control of a bank or bank holding company by an individual) and section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act

of 1989 (governing appointment of senior officers and directors of certain banks and bank holding companies), and implements other provisions of law applicable to bank holding companies.

The changes proposed by the Board to Regulation Y included removal of a number of restrictions on the permissible nonbanking activities of bank holding companies, expansion and reorganization of the regulatory list of permissible nonbanking activities, streamlining of the application/notice process, revisions to the tying rules, and streamlining of the procedures governing change in bank control notices and senior executive officer and director appointments. On September 30, 1996, Congress, in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("Regulatory Relief Act"), enacted several complementary changes to the BHC Act, primarily reducing the burden associated with seeking approval of nonbanking proposals.

The Board received over 300 comments regarding its proposal. The comments reflected the views and suggestions of a wide cross-section of interested persons, including bank holding companies, community groups and representatives, trade associations, individuals, law firms, Congressional representatives, state and local government and supervisory officials, and others. The commenters enthusiastically supported the Board's proposal to establish a streamlined procedure for well-run bank holding companies to engage in nonbanking activities and make nonbanking acquisitions, to remove unnecessary or outmoded restrictions on nonbanking activities, and to expand the regulatory list of permissible nonbanking activities. Commenters also applauded the proposed amendments to the tying provisions that would enhance the ability of banking organizations to provide customer discounts on services. In addition, commenters supported the proposed streamlining of the provisions governing a change in control of state member banks and bank holding companies and the appointment of new directors and senior executive officers.

A significant number of commenters, representing primarily bank holding companies and banking industry trade associations and representatives, also strongly supported the Board's proposal to establish a streamlined procedure for well-run bank holding companies to seek System approval to acquire additional banks within certain limits. On the other hand, a large number of commenters, consisting primarily of community representatives and groups, and individuals, strongly opposed any change to the Board's current procedure governing bank

acquisitions, in general, and adoption of the Board's proposed streamlined review process, in particular.

After carefully reviewing the comments, the Board has adopted a final rule that largely incorporates the initiatives contained in its proposal. The Board has made a number of revisions in response to concerns, suggestions and information provided by commenters. In particular, the Board has changed in several respects the streamlined procedure governing bank acquisitions and has adopted a number of measures designed to broaden and improve public notice of acquisition proposals. These changes focus on assuring that interested persons will have a meaningful opportunity to provide the Board with information regarding acquisition proposals. These and other changes adopted by the Board in response to concerns and suggestions raised by commenters are discussed in more detail below.

A number of comments addressed matters that are better addressed in supervisory policy statements or guidelines governing specific activities or in the context of an individual proposal. Many other matters raised by commenters, including suggestions regarding venture capital and portfolio investment activities and the scope of a bank holding company's authority to acquire shares of investment companies under section 4(c)(7) of the BHC Act, were not addressed in the original proposal and remain under active review.

Explanation of Final Rule

A. Process for Seeking Approval of Bank and Nonbank Acquisitions.

The Board's review of its current procedures for evaluating applications and notices identified two important principles that could be applied by the Board to reduce the burden associated with those procedures. One principle is that well-run bank holding companies that meet objective and verifiable measures for each of the criteria set forth in the BHC Act should be able to expect little burden or delay from the approval process unless special circumstances demonstrate that a closer review is warranted. The other principle is that the application/notice process should focus on an analysis of the effects of the specific proposal and should not become a vehicle for comprehensively evaluating and addressing supervisory and compliance issues that can more effectively be addressed in the supervisory process.

These principles guided the Board's decision to propose both procedural and substantive changes to the application/notice process in August 1996. In particular, the Board proposed to use the application/notice process 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 to rely on the on-site inspection and supervisory process as 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 within its authority.

In addition, the Board proposed to establish a streamlined process for reviewing proposals by well-run bank holding companies and reducing the information required to be filed for proposals that qualify for the streamlined procedure. The Board also proposed a number of other revisions that would eliminate unnecessary burden from the application/notice process, including eliminating the pre-acceptance procedure for all bank acquisition proposals, permitting public notice of an acquisition proposal to be published up to 30 days before the final regulatory filing was submitted to the System, and permitting the waiver of applications involving solely internal corporate reorganizations.

The final rule adopted by the Board incorporates these proposed changes with a number of important modifications discussed below.

1. Streamlined Procedure

The Board proposed a streamlined 15-day notice procedure for proposals by well-capitalized and well-managed bank holding companies with satisfactory or better performance ratings under the Community Reinvestment Act of 1977 ("CRA") to acquire banks and nonbanking companies within certain size limits. The Board's original proposal retained the Board's current requirements that public notice of all bank acquisitions be provided (both by newspaper and by Federal Register) and that the public be provided at least a 30-day opportunity to submit comments to the System regarding a proposed bank acquisition. These notice and comment provisions applied equally to proposals that qualified for the streamlined procedure and to proposals reviewed under the normal 30/60-day procedures.

Many commenters strongly supported the establishment of a streamlined

procedure for proposals by well-run bank holding companies that do not raise significant issues. These commenters indicated that the current approval procedure is burdensome and costly, particularly in the case of smaller acquisitions that do not raise any significant issue under the BHC Act. Commenters stated that the current process increases the risks and costs associated with an acquisition by imposing unnecessary delay in consummating both bank and nonbank acquisition proposals. This delay also increases the potential for loss of key employees, customer relationships and franchise value. In addition, commenters argued that delay in approving clearly permissible transactions postpones the realization by the holding company and the community of the benefits of the transaction and, in the case of a nonbanking proposal, puts bank holding companies at a disadvantage in competing with unregulated entities vying for the same target company. Moreover, commenters indicated that the management, legal and other resources required to prepare an application/notice under the current procedures are significant.

These commenters agreed that a streamlined procedure would reduce regulatory burden substantially by reducing the costs to bank holding companies of preparing applications as well as the costs associated with the delay inherent in the regulatory review process. Many commenters also stated that these changes would improve the ability of bank holding companies to be competitive with unregulated entities in making nonbanking acquisitions and engaging de novo in permissible nonbanking activities.

Several of these commenters urged the Board to take the additional step of reducing or eliminating the public comment period for proposals by banking organizations, or permitting a safe-harbor from comments if the banking organization maintains satisfactory or better CRA performance ratings or the comment relates to a matter that was reviewed in the CRA examination. These commenters argued that neither the BHC Act nor the CRA requires that public notice be provided for bank acquisition proposals, and that comments on the CRA performance of insured institutions would be more effective if provided in the CRA examination process. These commenters also contended that the delay associated with the requirement that the Board consider all public comments under a more protracted procedure is costly and delays the ability of well-run organizations to pass on benefits of an acquisition to the affected communities. In addition, they argued that providing a safe harbor from public comments for organizations with satisfactory or better CRA performance ratings would provide

an incentive for institutions to achieve better CRA performance ratings.

On the other hand, a significant number of commenters, including various community groups, believe that the current procedures for reviewing bank acquisition proposals work well and that no change to the current process is necessary. These commenters argued that the current 30/60-day procedure strikes an important balance between the banking industry's need for regulatory action within a limited period of time and the community's need to have a meaningful opportunity to discuss with the acquiring company the potential effects of a proposed bank acquisition and participate in the System review process. These commenters also expressed concern that the revisions proposed by the Board would weaken the review process for bank acquisition proposals by reducing the attention the System would pay to certain proposals, and would erode the ability of interested members of the public to provide information to the System for consideration in an analysis of the convenience and needs factor, the CRA performance record, and other aspects of a bank acquisition proposal. In addition, a number of these commenters argued that the Board should not adopt its proposed streamlined procedure for bank acquisition proposals by well-run bank holding companies because the Regulatory Relief Act adopts streamlined procedures only for nonbanking proposals and indicates that Congress rejected applying a similar streamlined approach to reviewing bank acquisitions.

The Board believes that it is important to address the concerns of both sets of commenters. The Board believes that it is sound public policy, in addition to being consistent with the Riegle Act, that the Board revise its application/notice process to reduce any unnecessary regulatory costs and burdens associated with that process. At the same time, the Board believes that revisions to its application/notice process should not diminish the quality of its review of transactions. In addition, the Board strongly believes that public participation in the application/notice process is important because it provides the Board with useful information, in particular, information regarding the effect of transactions on the relevant communities.

As the Board noted in its original proposal, the Board reviews approximately 1,300 applications and notices each year under the BHC Act. While these proposals include some complex and large proposals, the overwhelming preponderance are relatively simple proposals that raise no issues

under the statutory factors that the Board is required to consider. In more than 90 percent of the cases submitted to the System, no public comment is submitted. Currently, these cases are largely considered and approved by the Reserve Banks under delegated authority in a process that involves a pre-acceptance period of on average 25 days and final action about 30 days following the date of acceptance of a filing.

In these cases, the Board believes that there is room to revise the current review process to reduce paperwork and regulatory burden. The Board believes that this reduction in burden can be accomplished without diminishing the System's review of the statutory factors in any case or the opportunity for the public to provide information to the System that is relevant to the statutory factors. Importantly, the Board is maintaining the public notice and period for public comment that currently apply to bank acquisitions, including bank acquisitions reviewed under the streamlined procedures.

Accordingly, the final rule adopts the streamlined review process originally proposed by the Board, with several important modifications. These changes are in response to specific concerns raised by commenters and are designed to provide earlier and broader public notice of acquisition proposals, better access to regulatory filings, and to assure that the public continues to have a meaningful opportunity to provide the System with relevant information regarding proposals subject to System review. The Board believes that adoption of a streamlined process for bank acquisitions as well as all of the other revisions proposed by the Board to Regulation Y are within the authority of the Board under the current BHC Act and do not require statutory changes.

The changes to the original proposal adopted in the final rule are discussed more fully below and include the following:

* Timing of Publication. The regulatory filing for a bank or nonbank acquisition proposal must be made within 15 calendar days of publication of the request for comment on the proposal (as opposed to 7 days under the current procedure and 30 days under the original proposed revisions);

* New Methods of Public Notice. In order to make public notice available earlier, a new list of all bank and nonbank acquisition proposals

subject to System review will be prepared weekly and updated every 3 days, and made available to all interested parties using three methods: by mail (on a weekly basis), through a dedicated fax-on-demand facility (available 24 hours every day), and on the Board's Internet Home Page;

* Information Regarding Convenience and Needs. The regulatory filing under the streamlined procedure will retain the current requirement that the filer briefly describe the proposed transaction and the parties to the transaction, and, in the case of a bank or thrift acquisition, will require (as under the current procedure) a brief discussion of the effects of the proposal on the convenience and needs of the community and of steps that are being taken by the acquiring company to address weaknesses at insured institutions that have not received at least a satisfactory CRA performance rating;

* Convenience and Needs Standard. In the case of a bank or thrift acquisition, the standards for qualifying for the streamlined procedure have been modified to require the acquiring bank holding company to show that the transaction is consistent with the convenience and needs standard in the BHC Act as well as requiring that the CRA performance rating of the lead insured institution and insured institutions with at least 80 percent of the assets of the acquiring bank holding company be satisfactory or better;

* Timely Comments Require Full Consideration. A provision has been added specifying that a proposal filed under the streamlined procedure will be reviewed under the normal 30/60 day review process if a substantive written comment is received by the System during the public comment period;

* Guidance in Defining Substantive Comments. A provision has been added describing generally the types of comments that would be considered substantive (this provision contemplates that the vast majority of comments that are now considered by the Board would continue to be reviewed by the Board);

* Extensions to Obtain Filing. A provision has been added incorporating the Board's current policy of exercising discretion, based on the facts and

circumstances, to grant an extension of the public comment period of 1 to 15 days to an interested member of the public that has made a timely request for a copy of the regulatory filing on a proposal (this extension will not itself disqualify a proposal from consideration under the streamlined procedure);

* Joint Extension Requests. A provision has been added reflecting the Board's current policy of permitting a reasonable extension of the public comment period where the extension is jointly requested by an interested person and the applicant (for example, in order to permit completion of discussions between the applicant and the interested person); and,

* Size Limitation. A size limitation of $7.5 billion on any individual acquisition that may qualify for the streamlined procedures has been added as well as a limitation of 15 percent of the consolidated total capital of the acquiring company on the total consideration that may be paid in the case of the acquisition of a nonbanking company.

Under the new rule, bank and thrift acquisition proposals that meet the qualifying criteria in the regulation would be considered under a streamlined procedure that allows System action 3 business days following the close of the public comment period. This streamlined review process will allow System action on a qualifying proposal typically between 18 and 21 calendar days after the regulatory filing is made with the System. In addition, the regulatory filing required in these cases includes less paperwork than under the current procedures. Cases that are complex, or that raise an issue of first impression, issues of safety and soundness or other concerns, or that raise concerns regarding the effect of the proposal in the relevant communities will, as under the Board's current rules and policies, receive more in-depth analysis. Moreover, the Board retains the ability to notify a bank holding company for any reason that the streamlined notice procedure is not available and that the normal 30/60-day procedure must be followed.

The final rule eliminates unnecessary delay in all bank acquisition proposals by eliminating the current pre-acceptance period. Elimination of this period reduces the System review process by an average of 25 days. The function of this pre-acceptance period was to collect information regarding the specific proposal that may not be described in the original filing. The Board's

experience in reviewing nonbanking proposals (which are not subject to a pre-acceptance review period) indicates that this period is not necessary and that the System is able to request and obtain additional information in a timely fashion during the normal review period that begins after acceptance of the regulatory filing. The final rule allows the System to continue to request additional information at any time and to return as incomplete any filing that does not contain the information prescribed in the regulation.

The final rule also adopts the procedures established in the Regulatory Relief Act regarding nonbanking proposals. These provisions eliminate the prior notice and approval requirements of the BHC Act for any bank holding company that meets the qualifying criteria to engage de novo in any nonbanking activity approved by the Board by regulation. In addition, the Regulatory Relief Act established a streamlined 12-business day review process for proposals by well-run bank holding companies to acquire a company (other than an insured depository institution) engaged in permissible nonbanking activities or to engage de novo in nonbanking activities approved only by order.

A company or proposal that does not qualify for the streamlined procedure would follow the current application process, which provides for Reserve Bank action within 30 days of filing and for Board action within 60 days of filing. In the event that the System determines that a proposal filed under the streamlined procedure must be reviewed under the normal 30/60-day procedure, the final rule provides that the notice filed under the streamlined procedure would be accepted under the normal procedure and the normal procedure would be deemed to have begun at the time the notice was filed under the streamlined procedure. In cases that have been shifted from the streamlined to the normal processing schedule, the Reserve Bank and the Board would determine whether information supplementing the streamlined filing is need to address the relevant issues. As in any case, the System may request any additional information during the processing period necessary to resolve issues related to the proposal.

2. Public Participation in Review Process

a. Public Notice

The original proposal retained the current requirement for public notice of all acquisition proposals, including a full 30-day public comment period for

bank acquisition proposals. As noted above, the final rule retains the current public notice requirement and 30-day public comment period for bank acquisition proposals, including proposals that qualify for the streamlined procedure. Public notice of these proposals would continue to be given through newspaper publications in the affected communities and through publication in the Federal Register, as required under the Board's current procedures.

The Regulatory Relief Act amended section 4 of the BHC Act to eliminate the requirement for public notice of certain nonbanking acquisition proposals by qualifying bank holding companies. The final rule implements the statutory changes enacted by the Regulatory Relief Act. Public notice of all acquisitions of insured depository institutions, including savings associations, is still required, however, and would mirror the notice requirements applicable to bank acquisition proposals. In addition, public notice would continue to be required for nonbank proposals that do not qualify for the streamlined procedures under the Regulatory Relief Act, and for any proposal that involves a new activity that has not previously been determined by the Board to be closely related to banking.

b. Steps to Improve Public Notice

In connection with its revision of the current procedures, the Board will implement three steps that are designed to improve the effectiveness and timeliness of the public notice of acquisition proposals. First, the Board will publish a new listing of all acquisition proposals submitted for System approval under the BHC Act. This new document will include all bank acquisition proposals that have been published for comment, whether submitted under the streamlined or normal procedures, as well as proposals to acquire a nonbanking company that require public notice. This new document will be updated at least weekly and will indicate the applicant and target organization, the date that the public comment period closes, and the Reserve Bank to which public comments may be sent. The new document will be a more comprehensive list of cases open to public comment than the current H-2 (which includes only application/notices that have been filed with the System and does not generally indicate proposals that have been published for comment but not yet filed), and will be more quickly available than the current H-2 (which includes a list of Board and Reserve Bank final actions and other information that often requires a longer time to assemble). This document will be available by mail.

Second, to expedite distribution of this information, the Board will make the new document available through a fax-on-demand call-in facility. This facility will be available 24 hours a day, 7 days a week, and will automatically fax a copy of the new document to any caller. The information available on the fax call-in facility will be updated at least every three business days.

Third, the Board will make the new document available on its Internet Home Page, along with other information, including a list of actions taken by the System on applications and notices. Thus, the Board's Internet Home Page will include a list of all acquisition proposals requiring System approval under the BHC Act that have been published for public comment. This list will identify the applicant, target organization, closing date for the public comment period, and the Reserve Bank to which comments may be submitted. This information, like the fax call-in information, will be updated at least every 3 business days to reflect the addition of new proposals.

As a complement to providing broader and earlier public notice, the Board will make regulatory filings more quickly available to the public. The System expects to make the public portion of all pending applications/notices available to the public within 3 business days of filing.

c. Timing of Publication

Several commenters supported allowing an applying bank holding company to publish notice of a proposal up to 30 days in advance of filing the required application/notice for System approval. This would permit publication at a time closer to the announcement date of a proposed acquisition.

A large number of other commenters, however, suggested that permitting an applicant to publish notice 30 days before submitting an application/notice to the System would effectively deprive the public of an opportunity to comment on the information contained in the filing. These commenters were particularly concerned that this would result in less informed comments and would force commenters to express concerns relating to factors, such as the effect of the proposal on the convenience and needs of the community or CRA performance, without reviewing the plans of an applicant to address these matters or discussing these plans with the applicant.

In light of the comments, the Board has determined to adopt a revised approach that permits publication up to 15 days prior to the submission of the required filing. Under the Board's current rules, publication may occur up to 7 days prior to submission of the application. Allowing a slightly earlier publication date will allow for a shorter regulatory process in cases that meet the criteria for expedited action while at the same time assuring that the required filing will be available to the public for a significant part of the public comment period.

To address the possibility that a filing may not be submitted during the first 15 days of the public comment period, the final rule incorporates the Board's current policy that the Board may, in its discretion and based on the facts and circumstances, permit an extension of the public comment period, of an appropriate length up to 15 days, for an interested person that makes a timely request for both a copy of the required regulatory filing and additional time to file a comment regarding a proposal. In considering whether to grant a request for an extension, and the length of the extension to be granted, the Board has in the past and will continue to take into account such factors as when the proposal was announced and the regulatory filing made available to the public, when the request for the regulatory filing was made, and the specific reasons given by the requester for being unable to file a timely comment. A decision to grant an extension of the public comment period would not disqualify a proposal from action under the streamlined procedure.

d. Joint Requests to Extend the Comment Period

A number of commenters argued that a shortened processing period would frustrate the ability of community groups to conduct discussions with applicants in connection with a bank acquisition proposal regarding lending and other programs to help meet the convenience and needs of the community. These commenters indicated that a shorter regulatory review period would truncate the period for these discussions and potentially force premature objections to acquisition proposals, especially in situations that involve the initial entry of a banking organization into the community.

The Board believes that discussions between an insured institution and community representatives for purposes of identifying and helping to serve the banking needs of the community are appropriately and most effectively

conducted throughout the year and should not be confined to the period when an acquisition proposal is under review. In the application/notice context, the Board has granted requests for an extension of the public comment period that were made jointly by an interested party and an applicant for the purpose of allowing completion of discussions regarding a matter, such as CRA performance or competitive divestitures, that is relevant to the statutory factors the Board must consider in reviewing the proposal. The final rule specifically incorporates this policy and states that a reasonable extension of the public comment period will be granted upon a joint request of an interested member of the public and the applicant. This type of extension will not disqualify an otherwise qualifying proposal from consideration under the streamlined procedure.

e. Protested Cases

The streamlined procedure proposed by the Board provided that the Board could require an applicant to follow the current 30 or 60 day procedure if the Board indicates to the applicant for any reason that the proposal does not qualify for the streamlined process. The Board also stated that it expected that proposals by well-run bank holding companies would be disqualified only sparingly and in extraordinary situations. Among the situations identified by the Board as meriting review under the normal 30/60-day procedure is the situation where a timely substantive public comment is received by the System that raises an issue that cannot be resolved by the Reserve Bank under its delegated authority.

A number of commenters argued that the Board should not disqualify a proposal from consideration under the streamlined process on the basis of a public comment regarding CRA or fair lending performance if the applicant organization's insured depository institutions have satisfactory or better CRA performance ratings or if the comment relates to a matter that was reviewed in the CRA examination process. Other commenters argued that a proposal should not be disqualified from streamlined processing if a comment is submitted that relates to information that is available to the Board outside the application process (such as HMDA data) or a matter uniquely within the Board's expertise (such as financial, managerial or competitive matters), or if the commenter has not first attempted to discuss the concerns with the acquiring organization outside the approval process.

On the other hand, a large number of community groups and representatives argued that the application/notice process provides an important opportunity for members of the public and representatives of affected communities to provide information to the System relating to the impact of a proposal on the community. These commenters argued that it is critical to preserve the ability of the public to have input into the government review process and for the Board to take a close look at proposals that raise concern in the affected community. These commenters argued that the Board should indicate in the regulation that submission of a comment would trigger the normal 30/60-day processing period.

The Board had indicated in its original proposal that the filing of a timely comment could trigger the normal review process, and has adopted the suggestion of commenters that this be specifically included in the rule. Thus, the final rule provides that the normal 30/60-day process applies in any case in which a timely substantive comment regarding a proposal is received by the System. A proposal that is considered under the normal process will be acted on as soon as the System completes its review of the proposal, which may be before expiration of the 30 or 60 day period.

The final rule provides that a comment will be considered timely if it is submitted in writing and is received by the appropriate Reserve Bank or by the Board before the expiration of the public comment period. A comment will be considered to be substantive unless the comment involves individual complaints, or raises frivolous, previously-considered or unsubstantiated claims, or irrelevant issues.[1/] The Board notes that under this standard the vast majority of comments that have in the past been considered by the Board will continue to be viewed as substantive and will continue to be reviewed by the Board. A comment that is delegable will be carefully weighed in the review process by the Reserve Bank and any action taken by the Reserve Bank is subject to review by the Board. The Reserve Bank may seek additional information necessary to evaluate any delegable comment and may refer a comment for investigation to the appropriate federal banking agency or other relevant agency, if appropriate.

f. Late Comments

[1/] The Board will develop supervisory guidance identifying the limited types of comments that may be considered under delegated authority.

In its original proposal, the Board proposed to adhere to its current rules governing consideration of public comments, and to discontinue its practice of routinely considering comments, including supplemental comments filed by a timely commenter, that are filed after the close of the public comment period. The Board's Rules of Procedure currently provide that the Board is required to consider a comment involving an application or notice only if the comment is in writing and is received by the System prior to the expiration of the public comment period.

A number of commenters argued that the Board should continue routinely to consider late comments. Many of these comments focused on the potential under the original proposal that the public comment period could expire prior to the time that the regulatory filing was made and that any comment based on the regulatory filing was, therefore, likely to be late. Other commenters contended that public notice of proposals and of the closing date of the comment period is not adequate under the current rule, and, consequently, that late comments should be accepted and considered. In addition, commenters argued that the approval process is an important opportunity for the community to participate in the review of transactions that will directly affect the community, and that leeway should be given to the community to submit late comments. A number of community groups indicated that discussions with applicants, particularly applicants entering a community for the first time, often require substantial time and cannot always be completed during the public comment period.

The Board believes that the public often provides the System with important information in connection with acquisitions subject to System review. Consequently, the Board has determined to provide public notice and a significant period for public comment for all bank acquisition proposals subject to System review under the BHC Act, including proposals that qualify for the streamlined procedures.

As noted above, the Board has also taken a number of significant steps to improve the effectiveness of the public notice regarding bank acquisition proposals, including establishing a public listing focused on acquisitions that are subject to public comment and System review and making this list available by mail, Internet and fax. In addition, the Board has amended its original proposal to assure that the regulatory filing will be submitted at least 15 days prior to the expiration of the public comment period, and has reiterated its policies regarding

extensions of the public comment period to accommodate joint discussions between members of the public and applicants as well as timely requests for a regulatory submission that has been filed after the start of the public comment period.

Moreover, the Board notes that the public may at any time submit comments regarding the effectiveness of an insured depository institution in meeting the convenience and needs of the community for consideration in connection with the on-site examination of the CRA performance of the institution. The CRA examination process involves a review of the actual lending performance of an institution and includes discussions by examiners with members of the public regarding the institution's performance. Comments submitted for consideration in the CRA examination process provide the most effective opportunity for the public to affect the CRA performance and CRA rating of any institution and provide a regularly re-occurring opportunity for public input.

For these reasons, the Board has determined to adhere to its established rules regarding the filing of comments on proposals subject to System review. Accordingly, the Board will not consider comments, including supplemental comments filed by a timely commenter, that are submitted after the close of the public comment period and the filing of a late comment will not disqualify a proposal from review under the streamlined procedure. The Board continues to reserve the right to consider late comments at its discretion, but expects to exercise that discretion only in extraordinary circumstances.

3. Information Requirements

For transactions that qualify for the streamlined procedure, the Board proposed to reduce substantially the information required to be filed with the System. For example, the Board proposed to eliminate the requirement that the applicant submit financial information otherwise available to the System and the requirement that the applicant provide competitive data in cases that meet the Board's and the Department of Justice's policies.

Many commenters applauded the reduction in information requirements for proposals that meet the criteria for streamlined processing. Commenters noted that the costs of preparing an application/notice are often substantial and

argued that these costs are unnecessary in cases that meet objective criteria and do not raise any regulatory issue. Commenters believed that the savings would be substantial from reducing the paperwork associated with applications and notices.

A number of other commenters expressed concern that elimination of certain information requirements from the regulatory filing would reduce the ability of the System adequately to review a proposal and of commenters to assess the consequences of the proposal for the communities involved. In particular, a large number of commenters objected to eliminating the portion of the current application that requires an applicant to explain the effect of a bank acquisition on the convenience and needs of the affected communities. Commenters found this information especially helpful in understanding the effect of a proposal by an organization located outside the community to make its initial entry into the community.

The original proposal retained the requirement that applicants briefly describe the proposed transaction and the institutions involved, as well as the type of funding proposed. The final rule continues to require this information.

As an initial matter, the Board believes that very little additional information is needed to evaluate the financial, managerial and competitive factors regarding the types of non-complex proposals that qualify for streamlined processing. The System already receives, through reports and examinations, substantial information regarding the financial and managerial resources of bank holding companies and their subsidiaries. In addition, in order to qualify for the streamlined procedure, the proposal must meet objective competitive criteria designed to assure that the proposal does not raise an issue under those factors.

The Board agrees with commenters that the information regarding the effect of a proposal on the convenience and needs of affected communities currently provided by an acquiring bank holding company in its regulatory submission is new information relevant to the System's decision on the proposal that may not otherwise be available. Bank holding companies currently provide a brief description of the effects of an acquisition proposal on the convenience and needs of affected communities in the regulatory filing. The Board's experience has been that the description provided in the initial application is useful and is not burdensome. Accordingly, the Board has determined to retain

the requirement that, as part of its initial filing for approval, an applicant briefly explain the effect of a proposal on the convenience and needs of the affected communities. As under the current application/notice procedure, this explanation may contain a discussion of the CRA performance record of the acquiring organization and any actions that the organization proposes to take in order to help address the credit and other banking needs of the affected communities.

In addition, the final rule requires the applicant to outline the steps the organization is taking to address weaknesses in the CRA performance of insured depository institution subsidiaries of the acquiring holding company that have received a less than satisfactory CRA performance rating. The Board currently requests this information in the application process and believes this information is important for evaluating the ability of an acquiring organization to meet the convenience and needs of communities in which a bank or savings association acquisition is proposed. A holding company may satisfy this information requirement by filing copies of information prepared for the primary federal banking supervisor of the relevant institution, other documents already prepared by the organization, or a summary of the steps taken and being implemented.

The final rule also modifies, in certain respects, the information related to the financial, managerial and competitive factors that must be provided. These changes require limited information regarding the funding of an acquisition, certain pro forma financial information regarding the acquiring bank holding company and financial information regarding any nonbanking company that is proposed to be acquired. In addition, limited information regarding proposed new management is requested in certain cases. The final rule also clarifies the information needed for a new principal shareholder of a bank holding company to fulfill the notice requirement of the Change in Bank Control Act in connection with a transaction that is reviewed under the streamlined procedures of section 3 of the BHC Act.

In connection with nonbanking proposals, the final rule modifies the requirement that market index information be submitted in every case in light of the fact that competition in many nonbanking activities is broad and is measured on a national or regional basis that often makes calculation of market indexes burdensome and unnecessary. The rule requires instead a brief description of the competitive effects of the proposal in the relevant market and, in markets that are local in nature, a list of major competitors. It is expected that the Board

or the appropriate Reserve Bank would indicate to an applicant when market index information is necessary. Finally, the rule requires a bank holding company that seeks approval under the streamlined procedure for a nonbanking proposal to describe briefly the public benefits of the proposal.

4. Criteria to Qualify for Streamlined Procedures

Many commenters lauded the use of objective criteria for identifying proposals that would qualify for streamlined review. These commenters found reliance on criteria that identify well-run bank holding companies to be a constructive method of rewarding organizations that are well run and encouraging other organizations to take steps to meet these criteria. A significant number of commenters also generally agreed that the standards proposed by the Board would establish appropriate levels for identifying proposals that clearly meet the statutory factors that the Board must consider under the BHC Act.

As discussed below, many other commenters expressed concern that establishing a streamlined procedure based on objective criteria would result in too little analysis of proposals under the streamlined procedure. A large number of commenters also argued that it is inappropriate to rely on CRA performance ratings as qualifying criteria for the convenience and needs standard.

The Board has adopted several modifications to the qualifying criteria to address concerns raised by commenters.

a. Definition of Well-capitalized and Well-managed Bank Holding Companies

In connection with its interim implementation of the Regulatory Relief Act,[2/] the Board proposed to define a "well-capitalized bank holding company" for purposes of determining qualification for the streamlined procedure as any bank holding company that:

* Maintains a total risk-based capital ratio of 10.0 percent or greater and a Tier 1 risk-based capital ratio of 6.0 percent or greater, on a consolidated basis both before and immediately following consummation of the proposal;

* Maintains either a Tier 1 leverage ratio of 4.0 percent or greater or, if the bank holding company has a composite examination rating of 1 or has implemented the risk-based capital measure for market risk, a Tier 1 leverage ratio of 3.0 percent or greater, on a consolidated basis both before and immediately following consummation of the proposal; and

* Is not subject to any written agreement, order, capital directive, asset maintenance requirement, or prompt corrective action directive to meet or maintain a higher capital level for any capital measure.

Commenters generally supported these levels for defining a well-capitalized bank holding company. Commenters noted that the risk-based levels parallel the level at which an insured bank is considered to be well-capitalized for purposes of various provisions of federal law.

Most commenters that addressed these requirements agreed that the leverage ratio can be an inexact measure of capital adequacy for many bank holding companies, particularly for holding companies that engage in significant nonbanking activities or for bank holding companies that have significant trading

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[2/] The Board specifically requested comment on the definition of well-capitalized bank holding company in connection with enactment of the Regulatory Relief Act. Because the definition is contained in Regulation Y, the Board considered comments regarding that proposed definition in connection with this overall revision of Regulation Y.

portfolios and fee-generating off-balance sheet activities. Accordingly, a number of commenters requested that the Board eliminate or further reduce the leverage requirement. Large domestic banking organizations contended that the arguments for adopting a lower leverage ratio for defining a well-capitalized bank holding company than is used in defining a well-capitalized bank--namely that the leverage ratio is an inexact measure in certain situations--also militate for elimination of the leverage ratio. Foreign banks in particular assert that adoption of a leverage requirement would violate the principle of national treatment and would exclude strong and well-capitalized foreign banking organizations from the streamlined procedure because a leverage ratio is not required under the Capital Accord developed by the Basle Committee on Banking Regulations and Supervisory Practices ("Basle Capital Accord") and, consequently, is not applicable to banks in many foreign countries.

Smaller bank holding companies, on the other hand, argued that the leverage ratio should be applicable to all organizations equally. These organizations argued that eliminating or adopting a lower leverage standard would create an advantage for large organizations in making acquisitions.

The Board believes that, in the limited context of determining the qualifying criteria for the streamlined procedure, reliance on the risk-based capital ratios is sufficient. As noted above, the risk-based levels adopted are the same levels required in defining a well-capitalized bank.

The final rule does not establish a minimum leverage ratio for a bank holding company to qualify for the streamlined procedures because, as noted above and in the Board's original proposal, the leverage ratio is an inexact measure in certain situations. The Board has thus determined to apply a definition that applies equally to all organizations, regardless of size, origin or composition of balance sheet. The Board retains the ability to disqualify any organization from using the streamlined procedure if any financial or other factor, including the organization's leverage ratio, indicates that a closer review of the proposal is appropriate. The leverage ratio continues to be a criterion in defining whether an insured depository institution subsidiary of the holding company is well-capitalized.

To qualify for the streamlined procedure, a bank holding company must meet the risk-based capital levels on a consolidated basis. The Board generally

will not apply these definitions to intermediate-tier bank holding companies involved in the transaction. The procedure allows the Board to notify a bank holding company that it should follow the normal 30/60-day procedure if the System has concern about the financial strength of an intermediate-tier bank holding company that, for example, is itself an operating company or that contains significant debt.

Several commenters argued that the Board should adopt a process for granting exceptions to the capital requirements where the applicant can demonstrate that capital ratios do not adequately indicate the financial strength of the organization. In light of the other changes that have been adopted, the Board does not believe that a special exceptions process is necessary or appropriate. The capital criteria are based on internationally accepted risk-based standards, and are for the limited purpose of identifying companies that qualify for a streamlined review process. Banking organizations that do not qualify under these criteria are still permitted to make acquisitions and engage in permissible nonbanking activities by following the normal 30/60 review process.

As noted above, the standard of 10 percent total risk-based capital and 6 percent Tier 1 risk-based capital applies to all organizations, including foreign banking organizations, seeking to take advantage of the streamlined procedures. In its request for comment, the Board specifically requested comment on ways in which the qualifying criteria should be defined for foreign banking organizations in order to assure national treatment of foreign banking organizations under the streamlined procedures. Based on these comments, the final rule includes a number of provisions specifically applicable to foreign banking organizations.

Several commenters argued that, for purposes of determining whether a foreign banking organization meets the capital levels necessary to qualify for the streamlined procedure, a foreign banking organization should be permitted to use the definition of capital adopted by the home country of the foreign banking organization. For foreign banking organizations from countries that have adopted capital standards in all respects consistent with the Basle Capital Accord, the Board generally agrees that this permits the least burdensome approach to applying equivalent standards. Accordingly, the final rule provides that, for purposes of determining whether a foreign banking organization meets

the capital ratios described above for a well-capitalized bank holding company, a foreign banking organization may use the capital terms and definitions of its home country provided that those standards are consistent in all respects with the Basle Capital Accord. If the home country has not adopted those standards, the foreign banking organization may use the streamlined procedures if it obtains from the Board a prior determination that its capital is equivalent to the capital that would be required of a U.S. banking organization for these purposes.

The Regulatory Relief Act provides that, for purposes of determining qualification for the streamlined procedures for nonbanking proposals, U.S. branches and agencies of foreign banking organizations are considered banks and must meet the capital and managerial standards applicable to U.S. banks. The Board recognizes that branches and agencies are a part of the foreign banking organization and that capital is not allocated separately to a branch or agency. Accordingly, for purposes of determining the qualification for the streamlined procedures, the final rule deems the capital ratios of U.S. branches and agencies of foreign banking organizations to be the same as the capital level of the foreign banking organization.

For purposes of determining whether a foreign banking organization meets the managerial definition for the streamlined procedures, the final rule requires that: 1) the largest U.S. branch, agency or depository institution controlled by the foreign bank have received at least a "satisfactory" composite examination rating from its U.S. banking supervisor; 2) U.S. branches, agencies and depository institutions representing at least 80 percent of the U.S. risk-weighted assets controlled by the foreign banking organization at such offices have received at least a "satisfactory" composite examination rating from the U.S. banking supervisors; and 3) the overall rating of the foreign banking organization's combined U.S. operations is at least "satisfactory." Further, no branch, agency or depository institution may have received one of the two lowest composite ratings at its most recent examination. In addition, as with domestic bank holding companies, no U.S. branch, agency or insured depository institution may be subject to an asset maintenance agreement with its chartering or licensing authority. Under the final rule, the System may disqualify any banking organization, including a foreign banking organization, from using the streamlined procedure for any appropriate reason, including if information from the primary supervisor of a domestic bank or home country supervisor for a foreign bank indicates that a more in-depth review of proposals involving that

organization is warranted.

The final rule also retains the requirement that, in order to qualify for the streamlined procedure for bank acquisition proposals, a foreign banking organization must meet the home country supervision and information sufficiency requirements of the BHC Act.

Several commenters requested clarification of the types of supervisory actions that would disqualify a bank holding company from using the streamlined procedures. In this regard, the Regulatory Relief Act provides that, for purposes of the streamlined nonbanking procedures contained in that Act, a bank holding company may not be subject to certain types of administrative enforcement proceedings. The final rule clarifies that a bank holding company may not use the streamlined procedures for any nonbanking proposal or any bank acquisition proposal if any formal order, including a cease and desist order, written agreement, capital directive, asset maintenance agreement or other order or directive, is outstanding or any formal administrative action is pending against the bank holding company or any of its insured depository institutions. The System may, if appropriate, require a bank holding company to follow the normal 30/60-day procedure if an informal action, such as a memorandum of understanding or supervisory letter, pending against the bank holding company or any affiliate indicates that a more in-depth review is appropriate.

The Regulatory Relief Act permits exclusion of recently acquired insured depository institutions under certain circumstances in determining whether a bank holding company is well-managed. This exclusion has been adopted in the final rule for purposes of determining a bank holding company's qualification for the streamlined procedures for bank acquisition proposals as well as for nonbanking proposals.

The Regulatory Relief Act also permits the Board to adjust the level of insured depository institutions that must meet the well-managed definition for purposes of the streamlined nonbanking procedures, so long as the level adopted by the Board is consistent with safety and soundness and the purposes of the BHC Act. For purposes of the streamlined nonbanking procedures, the Board had proposed that the parent bank holding company, the lead insured depository institution and insured depository institutions controlling at least 80 percent of the insured depository institution assets of the holding company be well-

managed (rather than 90 percent as in the Regulatory Relief Act). In addition, no insured depository institution controlled by the bank holding company (other than a recently acquired institution, subject to the limitations discussed above) may have received one of the 2 lowest composite examination ratings.

As noted above, commenters addressing this issue were largely in favor of this definition. The Board believes that, in the limited context of determining the availability of the streamlined procedures, the definition proposed and adopted in the final rule, and in particular, the level of insured depository institutions that must be well-managed, will adequately identify organizations that merit a more in-depth review and is a definition that is consistent with safety and soundness and the purposes of the BHC Act. The Board notes that the Board retains the authority and discretion to require any organization to follow the normal procedures if appropriate.

b. Competitive Criteria

A few commenters suggested that the Board amend the competitive criteria by eliminating or raising the qualifying threshold levels of the Herfindahl-Hirschman Index ("HHI"), by increasing or eliminating the market share test, and by allowing a bank holding company to meet the competitive criteria after making divestitures. The Board has determined not to change its formulation of the competitive standard for the streamlined procedures.

The competitive criteria proposed and adopted by the Board reflect the HHI thresholds above which a bank acquisition proposal comes under close scrutiny by the Department of Justice ("DOJ") under the DOJ's Horizontal Merger Guidelines as applied to bank acquisitions, and by the Board under its existing delegation rules. In conducting a competitive analysis, both the Board and the courts have found the resulting market share to be an important indicator of the competitive effects of a proposal. Finally, divestitures to address competitive issues are not a normal event and typically indicate a transaction that requires an evaluation of information and factors beyond what may be accomplished in a streamlined procedure.

c. Convenience and Needs

Many commenters objected to the use of the CRA examination rating as a

measure of whether a proposal would meet the convenience and needs of the communities affected by a bank acquisition proposal. These commenters argued that CRA performance ratings are often outdated, are as a rule too high and, at best, represent an average of an institution's overall performance. These commenters also argued that reliance on CRA ratings would amount to a safe-harbor for virtually all institutions, and would represent a step that Congress considered and rejected in adopting the Regulatory Relief Act. In addition, commenters objected that use of these criteria would eliminate an in-depth review of the convenience and needs standard in all but protested cases. Commenters also objected to permitting an organization with up to 20 percent of its assets in institutions with unsatisfactory CRA performance ratings to take advantage of streamlined procedures.

Other commenters argued that CRA ratings provide the most reliable indicator of an institution's record of helping to meet the credit and other banking needs of the institution's existing communities and represent a strong indicator of the institution's willingness and ability to meet the banking needs of new communities. Several of these commenters also contended that reliance on CRA performance ratings as a criterion for streamlined processing of acquisition proposals would encourage organizations to meet and maintain satisfactory performance levels.

After review of the comments, the Board has determined to amend the criteria for qualifying for the streamlined procedure. The criteria adopted require that the record show that the proposal is consistent with the convenience and needs standard under the BHC Act and that the acquiring organization have satisfactory or outstanding performance ratings under the CRA at its lead insured depository institution and insured institutions representing at least 80 percent of the organization's banking assets.

As noted above, the Board has determined to retain the portion of the current regulatory filing in which the applicant describes the effect of the proposal on the convenience and needs of the affected communities. The System would evaluate this information as well as other information available to the System, including CRA performance ratings, in determining whether a proposal meets the convenience and needs factor in connection with the System's review of the proposal. The Board continues to believe that the CRA performance rating is a valuable and important measure of the record and ability

of an applicant to meet the convenience and needs of a community, and the Board would, as currently, give significant weight to that performance record in the streamlined process.

The Board believes that it may adopt the streamlined procedures as amended without any statutory changes to the BHC Act. The provisions under consideration by Congress in connection with the Regulatory Relief Act would have taken additional steps, including eliminating any public notice and opportunity for comment on bank acquisition proposals and eliminating consultation with the primary supervisor for the banks involved in the transaction.

d. Size

The Board proposed to limit to 35 percent of the acquiring holding company's assets the aggregate amount of bank and nonbanking assets that may be acquired during a 12-month period using the streamlined procedures. This aggregate limit would be calculated by reference to transactions approved under the streamlined procedure and would not include transactions that are reviewed under the normal 30/60-day process.

Several commenters argued that the 35 percent asset test would allow very significant proposals by large bank holding companies to be considered under the streamlined procedures, including mergers among institutions that rank among the ten largest banking organizations in the United States. These commenters contended that transactions that are large in absolute terms always require in-depth agency review.

A few other commenters argued, on the other hand, that it was important to assure that the streamlined procedures are available to acquisition proposals by large bank holding companies because acquisitions by these institutions allow the benefits of reduced regulatory costs to be shared by a larger number of consumers. These commenters suggested that the Board expand the size criteria in various ways.

Still other commenters argued that the size restriction would disproportionately limit transactions by small bank holding companies. These commenters contended that a higher limit should be established for small

organizations because the objective criteria proposed by the Board are particularly effective in identifying transactions that would not raise statutory issues for small bank holding companies.

In addition to these comments, the Board considered that the Regulatory Relief Act applies a limit on nonbanking acquisitions of 10 percent of the acquiring bank holding company's assets, unless the Board finds that a higher limit is consistent with safety and soundness and the purposes of the BHC Act. The Regulatory Relief Act also includes a limit of 15 percent of the holding company's consolidated Tier 1 capital on the gross consideration that may be paid by a bank holding company in a nonbanking acquisition that is reviewed under the streamlined procedures contained in that Act.

In view of these comments and enactment of the Regulatory Relief Act, the Board has made two amendments to the size criterion originally proposed. First, the Board has adopted an absolute limit of $7.5 billion to the size of an individual acquisition that may be reviewed under the streamlined procedures. This limit would require an in-depth review--on the basis of size alone--of any combination between organizations within approximately the one-hundred largest bank holding companies or involving nonbanking companies with a significant amount of assets.

The second change to the size criterion involves adoption of a limit on the gross consideration that may be paid in a nonbanking acquisition by a bank holding company under the streamlined process. As noted above, this limit was included in the Regulatory Relief Act. The Board believes that, in the context of a nonbanking acquisition, a measure based on consideration paid often represents a better test of the potential impact of a proposal on the financial resources of the acquiring organization than a test based on the amount of assets acquired because nonbanking acquisitions often involve the purchase of expertise and fee-based businesses that do not involve significant assets.

As noted above, the Regulatory Relief Act adopted a limit of 10 percent of assets on the size of any individual nonbanking acquisition that may occur under the streamlined procedures. The Regulatory Relief Act allows the Board, by regulation, to adopt an asset size limit that exceeds the 10 percent limit if the Board determines that a different percentage is consistent with safety and soundness and the purposes of the BHC Act.

The Board has determined to adopt its proposed 35 percent limit. The size limit adopted by the Board takes account of the aggregate size of all acquisitions--both bank and nonbank acquisitions--reviewed under the streamlined procedures over a period of time that approximates the supervisory examination schedule for most banking organizations. This aggregate limit allows better monitoring of the overall growth of an organization than does an individual transaction limit. As noted above, the Board has also adopted an absolute limit of $7.5 billion on any individual acquisition that may be reviewed under the streamlined procedure, as well as a limit on the amount of consideration that may be paid in a nonbanking acquisition. The Board has also retained the ability to require review of any transaction using the normal 30/60-day process if warranted for safety and soundness or other reasons. The Board believes that, in view of these other limitations, the aggregate 35 percent size limit is consistent with safety and soundness and the purposes of the BHC Act.

The Board has determined not to raise the size of its proposed exception from the growth limit for smaller bank holding companies. The Board proposed to permit a qualifying bank holding company to make acquisitions without regard to the 35 percent of asset limitation so long as the total assets of the bank holding company remained below $300 million on a pro forma basis. The Board believes that it is important to monitor rapid growth in the relative size of an organization and that an examination rating may not accurately reflect the financial and managerial strength of an organization that has grown significantly since the last examination was conducted. The Board also notes that a significant number of acquisitions by smaller bank holding companies that exceed the growth limit are likely to continue to qualify for the normal 30-day delegated action procedure.

e. Notice to Primary Bank Supervisor

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. A similar provision was enacted in the Regulatory Relief Act that requires 30 days notice to be given to the Director of the Office of Thrift Supervision of a proposal by a bank holding company to acquire a savings association.

Financial, managerial, legal, safety and soundness, and other concerns that

are known to the primary bank supervisor generally are shared with the System through ongoing arrangements for sharing supervisory information. Similarly, the System and the Office of Thrift Supervision regularly coordinate efforts and share information. Consequently, in practice, the primary supervisor generally allows the notice period regarding an application to expire without filing comments.

To implement this statutory requirement, the final rule requires the appropriate Reserve Bank to provide notice of each bank acquisition proposal to the primary supervisor for the relevant banks and of each savings association acquisition to the Director of OTS. The final rule allows the System to act on any proposal that qualifies for the streamlined procedure even though the period for obtaining comments from the primary supervisor has not expired. The final rule 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 at least 15 days after System action--which is the minimum post-approval period permitted by statute to allow DOJ review of a bank acquisition--it is expected that the notice period for the primary supervisor will expire prior to consummation of a bank acquisition proposal. In the case of thrift acquisitions, the OTS is working with the Board to streamline the comment process.

5. Pre-acceptance Review Period

The Board proposed to eliminate the current period prior to acceptance of a regulatory filing regarding a bank acquisition proposal during which the Reserve Bank reviews the informational sufficiency of the filing. Instead, the Board proposed to accept immediately any submission that contains the information specified in the rule for the proposed type of transaction. This change eliminates a pre-acceptance period that typically averages 25 days.

While commenters were generally in favor of this change, a number of commenters objected that elimination of the pre-acceptance period would reduce the ability of the System to obtain information needed to evaluate properly the merits of a proposal. The Board disagrees. The elimination of the pre-acceptance period does not in any way diminish the ability of the System at any time to request, or the responsibility of the applicant/notificant to provide, additional relevant information needed to evaluate a proposal. In addition, the

Board has retained the right to return as incomplete any submission that does not contain the information specified in the regulation or appropriate form.

The Board had previously eliminated a similar pre-acceptance period that applied to nonbanking acquisitions. The Board's experience with elimination of the pre-acceptance period for nonbanking acquisitions has indicated that a similar period is not necessary for bank acquisition proposals.

6. Hart-Scott-Rodino Act

One commenter expressed concern whether bank and nonbanking acquisitions approved under the Board's streamlined procedures would be exempt from the notification requirements of section 7A of the Clayton Act. Section 7A of the Clayton Act, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18A) ("HSR Act"), requires that persons contemplating certain mergers and acquisitions provide notice of the transaction to the Federal Trade Commission ("FTC") and the DOJ. The HSR Act, however, specifically provides an exemption from these filing requirements for transactions that require agency approval under section 3 of the BHC Act (i.e., the acquisition of shares or control of a bank or bank holding company). In addition, the HSR Act provides an exemption for transactions that require agency approval under section 4 of the BHC Act (i.e., the acquisition by a bank holding company of a nonbanking company) if the acquiring company provides to the FTC and DOJ copies of all information filed with the Board.

The Board believes that the streamlined procedures under Regulation Y continue to satisfy the requirement for an exemption from the HSR Act for both bank and nonbanking acquisitions. The streamlined procedures represent a more streamlined procedure for obtaining System approval for the acquisition of a bank or bank holding company under section 3 or the acquisition of a nonbanking company under section 4 of the BHC Act. As provided in the HSR Act, bank holding companies would continue to be required to file with the DOJ and FTC the information submitted to the Board in connection with a nonbanking acquisition. The staff of the DOJ and FTC have informally agreed with this position.

7. Conditional Approval

The Board has authority to impose conditions in connection with its action on any proposal, and has in fact imposed conditions that address safety and soundness, CRA, conflicts of interest, and competitive issues in a number of prior cases. The final rule incorporates this policy in order to make clear that this authority is available in connection with action on any case, including a case that qualifies for the streamlined procedure.

8. Waiver Process

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 reviewed by another federal banking agency under the Bank Merger Act. The Board proposed three changes to this portion of the regulation. First, the Board proposed to reduce the period for its review of waiver requests to 10 days from 30 days. Second, the Board proposed to specify in the regulation the information that must be provided with a waiver request. Third, the Board proposed to make the waiver process available for certain internal corporate reorganizations.

Commenters discussing this proposal generally supported these changes. Several commenters suggested that the Board make waivers automatic and eliminate the filing and review requirement altogether. Another commenter argued, on the other hand, that the Board should not allow the waiver of any application and should require application filings in every case.

The Board continues to believe that the waiver process represents a sensible reduction in duplication of regulatory review of proposals that are subject to review under identical standards in two different federal statutes. Accordingly, the Board has determined to retain the waiver process with the changes proposed. The Board believes that a 10-day review process is adequate and necessary to allow the System to identify any aspect of the proposal that may have a material effect on the bank holding company or otherwise fall outside the purview of the federal banking agency that is reviewing the merits of the underlying transaction.

The Board also believes that, as a general matter, corporate

reorganizations (such as the formation of a wholly owned intermediate-tier holding company, the merger of wholly owned holding companies, and the transfer of a bank from one part of an organization to another part of the same organization) do not generally require agency review. In each case, the bank holding company already has System approval to control and operate the banks involved in the transaction. In these cases, the Board agrees with commenters that a waiver should be automatic. The supervisory process provides the Board with ample authority and opportunity to address concerns that may arise from internal corporate reorganizations. Accordingly, the Board has adopted its proposal to extend the waiver process to internal corporate reorganizations and has made these waivers available without any filing requirement.[3/]

9. Small Bank Holding Company Policy Statement

As published in the proposed revision to Regulation Y, the Board's policy statement on one-bank holding companies was revised to generalize its applicability beyond the formation of a bank holding company to include acquisitions by qualifying small bank holding companies, to reduce the burden in the applications process, to incorporate previously informal policies that evolved since the original publication of the statement, and to remove obsolete language. Specifically, the Board proposed to permit small bank holding companies whose subsidiary banks are well managed and well-capitalized and whose proposals result in parent company debt to equity of less than 1.0:1, to be eligible for streamlined processing. These companies would also be permitted to pay dividends under certain conditions that are more clearly defined than in the existing statement. Proposals involving higher parent company leverage or a bank in less-than-satisfactory condition would be subjected to a focused review of the parent-level debt servicing ability, or other issue presented, under the Board's normal procedures. These organizations would also be restricted from paying dividends until their leverage was reduced to a 1.0:1 level and the organization is otherwise in satisfactory condition.

The final statement incorporates several changes that further reduce

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[3/] Under the final rule, the waiver process is not available for transactions by a holding company that is organized in mutual form or for transactions that occur outside the United States. These cases typically raise a variety of issues that require review in the application/notice process.

burden and make the policy statement more consistent with the general revisions to Regulation Y. It also incorporates suggestions from commenters and further clarifies the statement.

The major substantive change eliminates a disparity between larger and smaller bank holding companies in qualifying for the Board's streamlined procedures. The final statement incorporates the requirement that, to qualify for the new streamlined procedure, banks controlling 80 percent of the organization must be well-managed and well-capitalized, as opposed to the requirement in the previous version of the statement that all banks meet these criteria.

To address concern about the availability of the streamlined procedures to small bank holding companies that have not yet received an inspection rating, the final rule permits any unrated bank holding company, including a small bank holding company, to be eligible for streamlined processing as long as its subsidiary bank(s) are well-capitalized and well-rated and the bank holding company obtains a determination from the System that the company qualifies for the streamlined procedures.

Several commenters urged the Board to raise the $150 million size limit to qualify as a small bank holding company. The Board has determined not to raise this level at this time. The Board is concerned that an increase in the availability of higher levels of debt without consolidated capital requirements would raise overall risks to the banking system, including increased risk to the Bank Insurance Fund, without sufficient offsetting public benefits.

The statement was also reformatted to make it more understandable and several technical and conforming changes have been adopted.

10. One-bank Holding Company Formations

The Board proposed a number of modifications to the streamlined notice procedure governing 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, all shareholders must certify that the shareholders are not subject to any supervisory or administrative action, and the bank holding

company must identify the shareholders of the new bank holding company.

The Board proposed to reduce the percentage of the bank holding company that must be owned by shareholders of the bank from 80 to 67 percent and to require only the principal shareholders (i.e., shareholders owning in excess of 10 percent of the bank holding company) to certify that they are not subject to any supervisory or administrative action. In addition, the Board proposed to eliminate the publication requirement for this category of bank holding company formation because no publication is required for these transactions under the Riegle Act and because no regulatory purpose is served by requiring publication of these transactions, which represent only a corporate reorganization.

Only two commenters addressed these proposed revisions. Both supported the revisions and stated that the changes would help reduce unnecessary burden on individuals forming small bank holding companies. Accordingly, the Board has adopted the proposed changes in the final rule.

B. Explanation of Proposed Changes to the Nonbanking Provisions.

1. General Review and Updating of Nonbanking Activities

Section 4(c)(8) of the BHC Act generally provides that a bank holding company may engage in, or acquire shares of a company engaged in, activities that the Board has determined, after notice and opportunity for comment, "to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 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.

The Board has adopted its proposed reorganization and revision of the list of permissible nonbanking activities contained in Regulation Y. Commenters generally agreed that reorganizing the list into categories of functionally related activities would make the list easier to understand and make it easier for bank holding companies to obtain approval to engage in related activities. The Board intends that this new organization of the laundry list permit a bank holding company to obtain approval at one time to engage in all of the activities on the laundry list, all activities listed in a functional category, or, at the holding company's choosing, any specific activity within a category.

As explained above, the Board has also amended Regulation Y to incorporate the changes enacted in the Regulatory Relief Act that eliminate the prior approval requirement for well-run bank holding companies that propose to engage de novo in nonbanking activities that have been permitted by regulation. This change will significantly reduce regulatory burden and improve the ability of well-run bank holding companies to respond quickly to changes in the marketplace by eliminating the requirement that these companies obtain System approval prior to commencing de novo an activity permitted by regulation. This change will also permit a well-run bank holding company, without any prior notice or Board approval, to commence immediately any activity that is currently on the laundry list, any activity that has been added to the regulatory list of permissible activities in this final rule, and any new activity that is added to the regulatory laundry list in the future, provided that the bank holding company meets the qualifying criteria at the time the nonbanking activity is commenced. A bank holding company that does not qualify under the final rule may file a notice seeking approval to engage in any or all activities contained on the laundry list, as reorganized in this final rule.

The Board has also adopted a streamlined procedure for well-run bank

holding companies to obtain System approval to make nonbanking acquisitions that fall within the size limits noted above. This streamlined procedure is also available for proposals to engage de novo in nonbanking activities that have been permitted only by order.

As explained more fully below, the Board has amended the regulatory list of permissible activities to include nonbanking activities that previously have been determined by order to be closely related to banking. Among the activities that have been 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.

In addition, the Board has broadened 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. As explained below, the final rule also removes several restrictions on these activities that apply to bank holding companies but do not apply to banks that conduct these activities.

2. Removal of Restrictions Governing Permissible Activities

The Board has determined to remove a significant number of 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. The removal of these restrictions from the regulation does not affect the Board's determination that each activity contained on the laundry list is so closely related to banking as to be a proper incident thereto. A detailed discussion of the restrictions that have been removed is contained in subsections (3), (5) and (6), or the section below explaining "Restrictions Removed from Permissible Nonbanking Activities.".

The Board has determined to grant relief from these conditions to all bank holding companies authorized to conduct each activity, without the need for a specific filing by any individual bank holding company. Henceforth, a bank holding company authorized to conduct an activity on the revised laundry list

may conduct that activity subject to the limitations retained in this final rule and to other applicable laws. This relief extends only to the restrictions described as being removed in subsections (3), (5) or (6), or the section below explaining "Restrictions Removed from Permissible Nonbanking Activities." In particular, the relief does not extend to commitments or conditions that relate to the financial resources of a particular bank holding company or its subsidiaries, or to commitments or conditions that relate to the risk management polices of the organization, periods for divestiture of impermissible assets or shares, or other commitments or conditions that are not discussed in subsections (3), (5), or (6) or the section below explaining "Restrictions Removed from Permissible Nonbanking Activities." Bank holding companies that have committed to comply with restrictions not described in those sections as being removed may in writing request a determination that the condition or commitment is no longer appropriate.

In granting this relief, the Board notes that some of the conditions removed from activities on the Regulation Y laundry list involve restrictions imposed under other laws and regulations, such as the federal securities laws or the Commodity Exchange Act. The Board's action does not relieve any bank holding company of its obligation to conduct each activity in accordance with relevant state and federal law governing the activity. Other restrictions that have been removed describe good business practice but are not required to define the lawful scope of permissible activity. The Board will continue through the inspection process to monitor carefully the conduct of nonbanking activities by individual bank holding companies and reserves the right to impose any condition on the nonbanking activities or operations of any bank holding company as appropriate to assure that the activity is conducted in a safe and sound manner and within the authority granted by the Board.

3. Revision of Policy Statement Governing Investment Advisory Activities

The Board proposed to remove four restrictions contained in its 1972 interpretive rule regarding the investment advisory activities of bank holding companies with respect to mutual funds and other investment companies. These restrictions prohibit a bank holding company from:

* Owning any shares of a mutual fund advised by the bank holding company;

* Lending to a mutual fund advised by the bank holding company;

* Accepting shares of a mutual fund that the holding company advises as collateral for any loan to a customer for the purpose of purchasing those mutual fund shares; and

* 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.

These restrictions are intended to ensure that a bank holding company does not control a mutual fund in violation of the Glass-Steagall Act, as well as to mitigate potential conflicts of interests and the potential for customer confusion about the uninsured nature of investment company shares. The Board had previously removed a prohibition on a bank holding company purchasing, as a fiduciary, shares of a mutual fund advised by the holding company as well as restrictions contained in a staff letter (the "Sovran letter") on the sale of mutual funds by employees of a holding company and its affiliates.

As the Board noted in its proposal, existing statutory provisions appear adequate to address concerns about the ownership of shares of a mutual fund by the bank holding company. In particular, the investment limitations of section 4 of the BHC Act appear adequate to mitigate potential conflicts of interests that could result from removal of the investment restriction and limit the ability of a bank holding company to acquire more than 5 percent of the voting shares of or to control a mutual fund it advises.

Removal of the two lending restrictions would permit bank holding companies and their affiliates to make certain loans to the extent permissible under applicable federal or state law. For example, federal law permits insured banks, within limits, to make loans to a mutual fund advised by the bank, and the federal securities laws govern the extension of credit by any broker/dealer to a customer to purchase shares of a mutual fund. The System expects that extensions of credit by the holding company to a mutual fund or to a customer who uses the shares as collateral for the loan would be done on a safe and

sound basis.

The Board proposed to replace the fourth restriction with a provision permitting 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 company discloses to customers in writing the role of the holding company as an adviser to the investment company and that shares of the investment company are not federally insured and are not obligations of or guaranteed by any insured depository institution. The SEC 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.[4/]

Many commenters strongly supported these proposed revisions. Commenters stated that these changes would remove restrictions addressed more directly by other provisions of law and would allow bank holding companies to compete on a more equal basis with other investment advisors. Several commenters urged the Board to allow an investment company advised by a bank holding company to have a name identical to that of the bank holding company so long as the name is not identical to that of any subsidiary bank of the holding company. These commenters also contended that the Board's disclosure requirements in this area are duplicative and therefore should be eliminated. A small number of other commenters objected that the Board's proposal would cause increased confusion among customers regarding the nature of uninsured investment products.

After review of the comments, the Board believes that the proposed revisions to the interpretive rule are appropriate, and has adopted the revisions as proposed. The revised name restriction will allow increased flexibility in the marketing of investment companies advised by bank holding companies, and enhance the ability of bank holding companies to compete with other bank and nonbank-affiliated investment advisers. At the same time, the limitation on identical names and on the use of the word "bank," when coupled with the

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

disclosure requirements, should substantially mitigate the potential for customer confusion about the un-insured nature of investment company shares.

The Board believes that the disclosure requirements also continue to be appropriate to address the potential for customer confusion in situations in which the holding company or its affiliates advise a mutual fund and the sale of the mutual fund shares is not covered by the disclosure provisions of the Interagency Statement on Retail Sales of Nondeposit Investment Products. The disclosure requirements are increasingly proving to be an effective method for addressing potential customer confusion and do not appear to be onerous.

4. Procedures for Determining the Permissibility of Nonbanking Activities

The Board has adopted two provisions to Regulation Y to ease the burden associated with determining the authorization and scope of permissible nonbanking activities. First, the regulation specifically reflects 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. As required by the BHC Act, the Board would provide public notice that it is considering the permissibility of a given activity and would provide an opportunity for public comment.

The Board expects to consider amending the laundry list, for example, as new activities are authorized for banks, as experience with a narrowly defined activity indicates that the activity should be more broadly defined, or as developments occur in technology or the marketplace for financial products and services. The System will 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.

Several commenters urged the Board to add a provision limiting the processing period for evaluating proposals regarding the permissibility of a particular new activity, much as the Board has proposed for determining the scope of a currently permissible activity. On the other hand, other commenters argued that the Board should seek public comment on all proposals involving the permissibility of new activities or the scope of currently permissible

nonbanking activities.

The BHC Act, as amended by the Regulatory Relief Act, requires that the Board provide notice and opportunity for public comment prior to determining that an activity is closely related to banking. The Regulatory Relief Act eliminated the requirement that the Board provide an opportunity for a formal hearing regarding the permissibility of an activity. The final rule reflects both of these statutory actions. In particular, the final rule retains the provision currently in Regulation Y for public notice and opportunity for comment in connection with consideration of the permissibility of a new activity, and eliminates the requirement for a hearing. The Board retains discretion to order a formal or informal hearing regarding the permissibility of an activity where a hearing may be useful in resolving disputes of fact regarding an activity. Because of the complexity of many of the issues raised in determining the permissibility of a new activity, the Board has determined not to establish a specific limit on the time for evaluating these proposals.

The Board has amended the regulation to establish a streamlined procedure outside the application process through which any bank holding company or other interested person 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. The Board would issue an advisory opinion within 45 days, and make this opinion available and applicable to all similarly situated bank holding companies. At the time the Board reviews an 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 or involves special risks or concerns). As noted above, well-run bank holding companies may, without prior Board approval, engage de novo in any activity added to the regulatory laundry list.

Commenters agreed that these two procedures should make it easier for bank holding companies to participate in marketplace developments in permissible nonbanking activities. In addition, these procedures will eliminate a number of applications that are currently filed by bank holding companies that are uncertain about the scope of permissible activities.

5. Nonbanking Activities that are Incidental to a Permissible Activity

The Board has adopted its proposal to permit a subsidiary of a bank holding company engaged in financial data processing or management consulting activities, as an incidental activity, to derive up to 30 percent of its annual revenue from nonfinancial data processing or management consulting services, respectively. Commenters discussing this aspect of the proposal strongly supported this proposal and contended that bank holding companies engaged in data processing and management consulting activities have substantial expertise in these areas that allow them safely and soundly to provide these services involving nonfinancial data or nonfinancial customers. In addition, several commenters argued that bank holding companies currently are at a competitive disadvantage in providing data processing and management consulting services and in hiring employees because of the strict limitations tying these services to financial data and financial consulting.

A number of commenters argued that the Board should permit a greater amount of incidental activity, some arguing for no limit. Two commenters argued, on the other hand, that bank holding companies should not be permitted to engage in any nonfinancial data processing because the commenters believed that the benefits of access to the Federal discount window and the payments system and the unique products that banks can provide combine to give bank holding companies and banks an unfair advantage in competing with nonfinancial firms to provide nonfinancial products and services, including firms owned by women and minorities.

After considering the comments, the Board has adopted the revisions to the data processing and management consulting provisions as proposed. The Board believes that these revisions are necessary to allow bank holding companies to compete effectively in providing financial data processing and management consulting services.

The strict limitations on providing non-financial data processing and management consulting activities that were previously applied to bank holding companies inhibit the ability of bank holding companies effectively to compete with other providers who often combine financial and nonfinancial products. In a number of recent cases reviewed by the Board, for example, the record has indicated that it is common practice for a software provider to integrate financial

data processing software and nonfinancial data processing software in the same package. Similarly, commenters indicated that it is common for management consultants to provide advice on general matters in connection with providing advice on financial, accounting and similar matters. The strict limitations have also reduced the ability of bank holding companies to attract the most qualified employees--who often have expertise, clients, proprietary rights, and interests--that span financial and nonfinancial matters.

The Board believes that its proposed limit--30 percent of the revenue derived from permissible financial data processing activities, and 30 percent of the revenue derived from permissible financial management consulting services, respectively--represents a reasonable level of incidental activity that assures that the bank holding company is significantly involved in financial data processing or management consulting.[5/] The Board does not believe that this limited participation will permit bank holding companies an unfair competitive advantage over other providers of data processing or management consulting services. As the Board and the industry gain experience in data processing and management consulting activities, the Board will review and adjust the level of incidental activities as appropriate.

6. Expanded Exception for Acquisitions of Lending Assets in the Ordinary Course of Business

The Board proposed to revise 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

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[5/] In the data processing area, this 30 percent basket would not include revenue derived from the use of excess capacity or the sale of general purpose hardware that is currently permitted in accordance with the Board's regulation and policies governing those activities.

in the geographic area served by the bank holding company.

The Board has revised 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 has been removed. Second, the scope of the exception has been broadened to permit the acquisition of assets related to any lending activity. Third, the threshold limits have been 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.

Commenters generally favored the modifications proposed by the Board for expanding the scope and size of transactions that could be conducted in the ordinary course of business under this exception. The proposed broadening of the exception would eliminate an unnecessary approval requirement and paperwork for transactions that are relatively small and represent the ordinary course of business.

7. Consummation Period for Certain Proposals.

The Board had originally proposed to eliminate the requirement that a bank holding company exercise its authority to engage de novo in a nonbanking activity within one year of receiving System approval. While several commenters expressed support for this approach, the final rule does not include a specific provision adopting this change for two reasons. First, since the date of the original proposal, the Regulatory Relief Act eliminated altogether the prior approval requirement for well-run bank holding companies that choose to engage de novo in nonbanking activities permissible by regulation. This statutory change eliminates a substantial portion of the cases that would have benefitted by the proposal to eliminate the consummation period. Second, the Board may, without any regulatory change, adjust the consummation period on a case-by-case basis. The Board believes this is a more appropriate approach in cases that do not qualify for the statutory exception in the Regulatory Relief Act.

C. Explanation of the Restrictions Removed from Permissible Nonbanking Activities.

As noted above, the Board has removed 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 has eliminated as well as certain limitations that the Board has retained. In several areas, the Board expects to develop supervisory policy statements to address potential adverse effects that may be associated with certain activities. The Board may seek comment on those supervisory policy statements as appropriate.

1. Extending Credit and Servicing Loans

Lending activities are already broadly defined and contain no restrictions. Permissible lending activities include the types of lending activities that were previously listed by way of example in Regulation Y, such as lending activities conducted by consumer, mortgage, commercial, factoring, and credit card companies. Removal of those specific examples from the proposed rule was intended to make clear that making, acquiring, brokering and servicing all types of loans or extensions of credit are considered permissible lending activities, and elimination of these examples from the final rule does not diminish the scope of the activity or the permissibility of those examples of lending activities. Nevertheless, at the request of a number of commenters, factoring has been re-included as an example of a permissible lending activity.

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 to customers, tying, preferential treatment of customers of affiliates, disclosure of confidential customer information without customer consent and similar restrictions previously

contained in Regulation Y 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 will be developed.

Several commenters requested that the Board eliminate all restrictions governing the acquisition of debt in default, in particular, the requirement that the period for disposing of shares or assets securing debt in default be calculated as of the date the defaulted debt is acquired. The Board believes the three restrictions adopted in the regulation are necessary to define the scope of the activity and to assure that the activity remains the acquisition of debt rather than an impermissible acquisition of securities or other assets. The requirement regarding the calculation of the period for disposing of the underlying shares or assets subjects the activity to the same limitations that apply under the terms of the BHC Act to the acquisition of shares or assets in satisfaction of a debt-previously-contracted. During this period, the holding company may divest the property or, as in the case of any debt that has been previously contracted, restructure the debt.

3. Leasing Personal or Real Property

The changes to the leasing provision have been adopted as proposed. Specifically, the regulation removes a number of restrictions from the two types of leasing activities permissible for bank holding companies, full-payout leasing and high residual value leasing,[6/] including the following restrictions:

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

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[6/] 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 current 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.

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.

Commenters favored removal of these restrictions and noted that removal of these restrictions from the regulation would permit bank holding companies greater flexibility to acquire property in quantity in the expectation of leasing activities and would allow more flexibility in selling or re-leasing property at the expiration of a lease. It is expected that supervisory guidance would be developed to address potential issues arising from removal of the restrictions.

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 has also been removed. This limit does not apply to national bank leasing activities. While commenters favored removal of the requirement that the estimated residual value of real property be limited to 25 percent of the value of the property at the time of the initial lease, this restriction was retained in order 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.

The regulation has been modified at the request of commenters to clarify that, as a general matter, the requirement that a lease be <u>non-operating</u> means

that the bank holding company may not itself (or through a subsidiary) repair, operate, maintain or service the equipment or property being leased during the lease term. The Board has applied this interpretation since 1974 in order to help distinguish bank holding company leasing activities from general commercial activities. A more detailed definition of a nonoperating lease in the automobile rental context, which was developed in litigation and adopted by the courts, has also been retained. The regulation provides that, in either case, a bank holding company is permitted to arrange for a third party to provide these 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[7/] and that the activities of the institution conform to the relevant statutory provisions of the BHC Act. As noted above, by the terms of the Regulatory Relief Act, the operation of a savings association requires prior System approval.

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

Like the initial proposal, the final rule groups together all investment and financial advisory activities and broadly permits acting as investment or financial adviser to any person, without restriction. Without limiting the breadth of the advisory authority, the rule also lists specific examples of certain types of investment or financial advice, counseling and related services that previously had been separately authorized. These examples are :

[7/] 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.

* 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 advice regarding commodities and derivatives transactions; and

* Providing consumer educational courses and providing tax-planning and tax-preparation.

The final rule removes the few restrictions that have in the past been imposed by the Board on financial and investment advisory activities. These restrictions do not apply to banks that provide investment advisory services.

Specifically, the final rule removes the 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 (to the extent otherwise permitted by law). This activity would continue to be governed by the fiduciary principles in relevant state law. Moreover, the final rule permits bank holding companies to provide retail customers with investment advice concerning derivatives transactions and to provide discretionary investment advice regarding derivatives transactions to institutional or retail customers as an investment adviser, commodity trading advisor, or otherwise. This includes providing discretionary investment advice to any person regarding contracts relating to financial or nonfinancial assets. The conduct of these activities would, of course, be subject to the requirements of applicable law, including applicable state and federal laws governing fiduciary activities or advisory activities.

The final rule permits bank holding companies to engage in any combination of permissible nonbanking activities listed in Regulation Y. Accordingly, bank holding companies may provide financial and investment advice (including discretionary investment advice) together with permissible agency transactional services, investment or trading transactions as principal, or

any other listed activities. Supervisory guidance may be developed, as needed, to address conflicts of interest that may arise from providing certain services in combination.

The final rule also deletes restrictions in the areas of tax-planning, tax-preparation 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.

The commenters addressing this activity strongly supported the consolidation of the various advisory activities, the expansion of permissible advisory activities, and the removal of existing restrictions imposed by the Board on these activities. These commenters argued that the provision of all types of financial and investment advice is within the expertise of banking organizations and, therefore, closely related to banking.

Several commenters requested further guidance on the scope of permissible advisory activities and urged the inclusion of examples of additional specific types of advisory activities, such as advisory activities related to real estate, in order to clarify the permissibility of these activities. Other commenters requested clarification that the use of examples did not imply that advisory activities that are omitted from the list of examples are not permissible. As noted above and in the original proposal, the final rule includes any investment or financial advisory activity without restriction. The examples included in the final rule are not intended in any way to limit the scope of the financial and investment advisory activity. The examples are illustrative rather than exclusive examples of permissible advisory activities, and have been retained to recognize that certain advisory activities have been specifically approved under other provisions of Regulation Y and continue to be permissible.

Some commenters suggested revisions to the proposal's description of certain examples. In response to these comments, the final rule clarifies that the provision regarding advice on mergers, acquisitions and other transactions includes "other similar transactions." At the suggestion of several commenters, the final rule has been revised to clarify the permissibility of providing investment advice regarding transactions with respect to any transactions in foreign exchange, swaps and similar transactions, commodities, and forwards

contracts, futures, options, options on futures, and similar instruments.

Several commenters noted that there currently is uncertainty regarding the jurisdiction of the CFTC over some transactions involving foreign exchange. The final rule is not affected by the scope of CFTC jurisdiction. The Board intends that references to transactions "in foreign exchange" throughout the regulation include transactions in foreign exchange, options on foreign exchange, futures on foreign exchange, options on futures on foreign exchange, swaps in foreign exchange, and similar foreign exchange-related instruments. A bank holding company must, of course, comply with the rules of any other federal or state agency to the extent that the bank holding company conducts an activity subject to that agency's jurisdiction, as determined by the relevant statute, agency rule or court decision.

7. Agency Transactional Services for Customer Investments

The final rule reorganizes into a single functional category the various transactional services that a bank holding company may provide as agent. 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.

a. 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 final rule permits 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 were deleted in the proposal.

The Board sought 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. Several commenters opposed the elimination of the disclosure requirements in the regulation, contending that the interagency policy statement and SEC regulations are not providing adequate consumer protection. A number of commenters, however, supported the elimination of the disclosure requirements in the regulation on the basis that these requirements were duplicative of requirements contained in the interagency policy statement and SEC regulations.

The final rule deletes the disclosure requirements. 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.

Recent supervisory experience indicates that banking organizations and their affiliates, in general, are becoming more effective in implementing the regulatory disclosure requirements and that customers are becoming increasingly aware that investment products purchased at banking organizations and their affiliates are not federally insured. Moreover, the Board and the SEC have adequate supervisory authority to ensure that bank holding companies comply with the regulatory disclosure requirements. To the extent that disclosures to customers are appropriate in areas not covered by the regulatory policy statements or SEC regulations, the Board will consider whether to develop supervisory guidance, on an interagency basis where appropriate.

b. Riskless Principal Activities

The Board recently reduced the restrictions that govern riskless principal

activities.[8/] The restrictions that were retained were designed to ensure that bank holding companies do not avoid the Glass-Steagall Act provisions by classifying underwriting and dealing activities as riskless principal activities. The restrictions that the proposal 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 Board requested comment on whether these restrictions, and in particular the second and third restrictions, are necessary to assure compliance with the Glass-Steagall Act. The majority of commenters discussing the riskless principal activity argued for the deletion of all four restrictions, contending that none of the restrictions are necessary to ensure that a nonbanking subsidiary does not engage in underwriting or dealing through its riskless principal transactions and that any concern in this regard would be addressed by a requirement that the subsidiary not hold itself out as a dealer with respect to any security. Several commenters noted that the restrictions would prohibit riskless principal transactions on behalf of a section 20 affiliate even if this affiliate was not the underwriter or dealer for the security in question. These commenters maintained that this would put bank holding companies with section 20 affiliates at a competitive disadvantage.

[8/] The Bank of New York Company, Inc., 82 Federal Reserve Bulletin 748 (1996).

Several commenters also suggested that the Board permit riskless principal transactions in the primary market generally. Some of these commenters specifically urged the Board to allow bank holding companies to act as riskless principal for the sale of commercial paper in the primary market because commercial paper tends to have short maturities.

The final rule retains the requirement that riskless principal transactions be conducted in the secondary market. The Board has determined, however, to eliminate all but two restrictions in the final rule. The final rule retains the first proposed restriction, which prohibits a bank holding company from using its riskless principal authority to sell 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. This restriction, as well as the requirement that the transactions be conducted in the secondary market, is designed to distinguish riskless principal activities from private placement and underwriting or dealing activities. This classification of riskless principal transactions does not prevent bank holding companies from engaging pursuant to other authority in permissible private placement activities or in underwriting and dealing activities, both of which permit transactions in the primary market and with an issuer.

The Board has also determined to revise the second restriction to focus on transactions involving a bank-ineligible security for which the bank holding company or any affiliate acts as underwriter (during the underwriting period and for 30 days thereafter) or dealer. This revision narrows the scope of the restriction while addressing the Board's concern that a nonbanking subsidiary not use its riskless principal authority to engage in underwriting or dealing activities. As modified, this provision also addresses the concerns covered by the third and fourth restrictions. Consequently, the final rule deletes the last two restrictions in the proposal.

c. Private Placement Activities

The Board proposed to add private placement activities to the laundry list, using the definition of private placement activities adopted by the SEC and the federal securities laws. The proposal removed all but one restriction that had been imposed by Board order on the conduct of this activity. 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.

Among the restrictions that the proposal removes 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 purposes 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 sought 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. The commenters discussing private placement activities strongly supported the removal of these restrictions from private placement activities.

Several comments urged the Board, however, not to adopt the definition of private placement in the federal securities statutes, contending that such definition is too restrictive. The final rule, as the proposal, defines private placement in accordance with the Securities Act of 1933 (1933 Act) and the

rules of the SEC. For purposes of including private placement activities on the laundry list, the Board believes it is reasonable to look to the definition of private placement adopted by the SEC, the primary federal regulator of securities activities, and the distinctions the SEC has drawn between private placement and underwriting or dealing activities. This definition does not limit bank holding companies from seeking to engage in other securities activities pursuant to Board order.

One commenter also requested that the definition of private placement be broadened to include private resales of securities to institutional buyers and private placements of securities of registered investment companies. The final rule would permit private resales of privately placed securities if the transaction is conducted in accordance with the requirements of the 1933 Act and the rules of the SEC, the bank holding company acts only as agent for such private resales by third parties, and the bank holding company neither purchases for its own account securities that it is placing nor holds in inventory unsold portions of securities it is attempting to place. This would not include acting as a dealer with respect to resales of privately placed securities, an activity that bank holding companies may seek to engage in pursuant to Board order. Similarly, the final rule would permit bank holding companies to act as agent for the private placement of securities issued by any company, including an investment company, to the extent that these private placements are conducted in accordance with the requirements of the 1933 Act and the SEC rules and the Board's restrictions on purchasing or inventorying such securities.

Some commenters also recommended that the Board remove the prohibition on a bank holding company purchasing or repurchasing the securities it places. Several of these commenters contended that such purchases should be permissible if the company made the decision to purchase the securities for its own account simultaneously with or after, and separate from, the decision to engage in the private placement. One commenter maintained that a company engaged in private placement activities should be permitted to invest in the securities being placed so long as it had a bona fide expectation of and made a bona fide effort in placing the securities. The final rule retains the proposal's restriction on purchasing or repurchasing the securities that are privately placed. The Board believes this restriction is appropriate to prevent a bank holding company from classifying as private placement activities its securities underwriting activities, which are governed by the Glass-Steagall Act and the

Board's section 20 decisions.

The final rule does not contain a limitation on the amount of a particular issue of securities that a company may place with an affiliate. As the Board noted when it first authorized a bank holding company to place securities with an affiliate, banks privately place securities with affiliates and no particular supervisory problem appears to have arisen from these investments.[9/] The Board continues to recognize the increased potential for certain conflicts of interests if affiliates purchase a substantial portion of an issue of securities placed by an affiliate. In this regard, insured depository institutions that purchase securities privately placed by an affiliate must comply with section 23B of the Federal Reserve Act as well as the limitations in the Glass-Steagall Act relating to the purchase of investment securities. The Board expects that nonbank affiliates that purchase these securities will do so in accordance with appropriate internal policies and procedures.

d. Futures Commission Merchant Activities

i. 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, and to provide execution services without also providing clearing services. Commenters strongly favored modification of the current regulation to reflect these Board orders.

As noted above, the final rule 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. The final rule also would permit a bank holding company to perform permissible futures

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[9/] J.P. Morgan & Company Inc., 76 Federal Reserve Bulletin 26, 28 (1990)

commission merchant ("FCM") activities through a section 20 subsidiary.

The final rule permits a nonbanking subsidiary to act as an FCM regarding any exchange-traded futures contract and options on a futures contract based on a financial or nonfinancial commodity. The final rule also deletes the restriction that a bank holding company not act as an 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 and a review by the Federal Reserve System of the rules of an exchange, whether domestic or foreign, would not be the most effective method for addressing 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. Accordingly, the Board would use the supervisory process, which includes regular inspections of the holding company and its affiliates, to address concerns about the effectiveness of the holding company's risk management systems.

The final 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.

The CFTC has not found it necessary to prohibit FCMs from trading for their own account, and removal of that restriction from the Board's regulation allows an FCM affiliated with a bank holding company to compete on the same basis as an FCM not affiliated with a holding company. Experience has not indicated that the affiliation of an FCM with a bank holding company itself increases the risks or conflicts that could arise from the combination of FCM and proprietary trading activities. Conduct in the other areas listed above is addressed in rules of the CFTC or the relevant self-regulatory organizations, which are applicable to any FCM.

Like the initial proposal, the final 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). The proposal retained the requirement of the current regulation 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 was to limit the bank holding company's exposure to contingent obligations under the loss sharing rules of exchange clearinghouses in order to preserve the holding company's ability to serve as a source of strength to its subsidiary insured depository institutions. The Board invited comment, however, on whether this restriction was 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.

Most commenters that discussed FCM activities supported the alternative restriction as sufficient to address a bank holding company's potential exposure to contingent obligations under loss sharing rules of clearinghouses and to establish clear parameters for a bank holding company's involvement on an exchange or clearing association. Four commenters suggested that bank holding companies be given the option of choosing which restriction is more suitable to business conducted on a particular exchange. If a choice must be made between a prohibition against membership or against a guarantee of non-proprietary trades, these commenters generally preferred the latter, noting that holding company membership is a prerequisite on a number of exchanges for receiving reductions in fees or other benefits.

Based on its experience and a review of the comments, the Board has determined that an alternative restriction that prohibits the parent bank holding company from guaranteeing or otherwise becoming liable for non-proprietary trades conducted by or through its FCM subsidiary more effectively addresses the Board's concern about a parent bank holding company's exposure to an exchange's or clearinghouse's loss sharing rules than the current provision limiting the holding company's membership on an exchange. This alternative restriction effectively protects the parent bank holding company from potential exposure from customer trades and open-ended contingent liability under loss sharing rules while recognizing that most exchanges require a parent to

guarantee proprietary trades. Accordingly, the final rule revises the regulation to prohibit the parent bank holding company from guaranteeing or otherwise becoming liable to an exchange or clearinghouse for trades other than those conducted by the subsidiary for its own account or for the account of an affiliate. The final rule eliminates the existing prohibition on an FCM subsidiary becoming a member of an exchange that requires the parent bank holding company also to become a member.

Other commenters requested confirmation that an FCM subsidiary may, as an incidental activity, provide various futures-related financing to customers, such as financing to cover margin obligations. Lending is a permissible activity for bank holding companies, and the final rule would not prohibit permissible lending activities in combination with FCM activities. This permits an FCM owned by a bank holding company to compete on the same terms with an FCM that is not affiliated with a bank holding company. The Board notes, however, that some exchanges prohibit FCMs from providing margin financing, and CFTC rules require full capitalization for any extensions of credit to customers. An FCM controlled by a bank holding company must continue to abide by the rules of the CFTC and any exchange on which the FCM is a member or trades.

Several commenters requested clarification that the authority for an FCM subsidiary to become a member of an exchange included authority to open an office in the country were the exchange is located. In addition, several commenters requested clarification that the expanded FCM activities permitted under Regulation Y also would be permitted under the Board's Regulation K.

Regulation Y currently provides, and the final rule continues to provide, that a nonbanking company permitted under section 4(c)(8) of the BHC Act to engage in a nonbanking activity may open offices outside the United States to conduct that same activity unless the bank holding company has not received approval to conduct the activity outside the United States. A bank holding company that currently has authority to engage in FCM activities on a geographically limited basis may, if it qualifies for the streamlined procedures, conduct these activities de novo outside the U.S. through direct offices of its 4(c)(8) affiliate without further approval. The scope of FCM and other activities that fall under Regulation K will be considered by the Board in connection with its review of Regulation K.

ii. Clearing-only Activities

The Board has by order permitted bank holding companies to clear trades that the FCM has not executed itself, and the final rule incorporates this activity in the laundry list. The proposal retained two restrictions currently imposed by Board order. These restrictions: 1) prohibit the clearing subsidiary from serving as the primary or qualifying clearing firm for a customer; and 2) require the clearing subsidiary to have a contractual right to decline to clear any trade that the subsidiary believes poses unacceptable risks (a so-called "give-up" agreement).

The Board adopted these restrictions 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 restrictions 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. 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.[10/]

The Board sought comment on whether these two restrictions on the conduct of clearing-only activities by bank holding companies should be retained. The Board also invited comment on whether and how bank holding companies are able to monitor and limit adequately the potential exposure from conducting these activities.

Commenters who discussed FCM activities strongly supported the removal of these two restrictions on clearing-only activities in favor of the Board relying on on-site examination and supervision of a clearing subsidiary's risk management systems for monitoring and managing its credit exposures. Commenters maintained that the Board's restrictions are not necessary in light of the risk management tools currently available to clearing firms. They contended

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

that clearing firms can effectively monitor and limit their potential credit exposures through various risk management procedures, including: establishment of trading limits for each customer; adjustment of such limits based on market conditions and ongoing credit evaluations; monitoring of customer market risk, trading exposure and compliance with trading limits; assessment and collection of initial and maintenance performance bond or margin; and payment of gains and collection of losses associated with open positions through a mark-to-market process on both an intra-day and end-of-day basis.

Commenters explained that all exchanges provide clearing members with complete information regarding trades cleared through that member's account at the end of the trading day, which thereby limits a clearing FCM's exposure to a client to the trading transactions on that day. Commenters noted that technological improvements have enabled a growing number of exchanges to develop systems that collect and report intra-day trade matching information. Commenters also noted that, in many markets, a clearing firm can, pursuant to exchange rules or contractual arrangements, advise an executing broker that it will not accept further trades of that customer. In agreements with customers, clearing brokers also typically reserve the right to liquidate a customer's position if the required margin is not posted promptly. Commenters added that potential exposure is further mitigated by various exchange rules relating to position limits, and large trading position reporting. In addition, commenters contended that oversight by the CFTC or the SEC, which includes capital, reporting, performance bond and margin, and recordkeeping requirements, assists in monitoring the management of risks associated with acting as a primary clearing firm, including clearing trades executed by exchange locals and market makers.

In light of these comments, the final rule deletes the proposal's restrictions relating to primary clearing or qualifying firm activities and customer "give-up" agreements.[11/] Examiners will assess and supervise FCM policies, procedures and practices relating to clearing-only activities, taking into consideration the

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[11/] A commenter requested that the Board clarify in the regulation that the securities brokerage activity permitted in Regulation Y encompasses clearing apart from executing trades in securities. Both the current and final rule permit securities brokerage activities broadly, including executing-without-clearing and clearing-without-executing trades in securities. The final rule specifies this.

nature of the FCM's clients, the particular exchanges through with the subsidiary provides clearing services, and the related risks involved. It is expected that the Board would develop supervisory guidance on management of risks involved in clearing-only activities.

e. Other Transactional Services

The proposal added 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. Commenters supported the inclusion of these activities on the regulatory laundry list. Inclusion of this activity is not intended to limit the securities brokerage, FCM, private placement or riskless principal activities permitted under the final rule.

Several commenters suggested that the scope of this provision be expanded to include acting as a broker with respect to forward contracts based on financial and nonfinancial commodities, regardless of whether the bank holding company could invest in or trade such instrument as principal. The commenters contended that providing brokerage services, as agent, to customers with respect to forward contracts on either financial or nonfinancial commodities should not be dependent on whether the bank holding company may take a principal position in the contract. In view of these comments, the final rule clarifies that a bank holding company may act as a broker with respect to forward contracts based on a financial or nonfinancial commodity that also serves as the basis for an exchange-traded futures contract. This permits a bank holding company to act as agent in a forward contract that involves the same commodities and assessment of risk that underlay the permissible FCM activities of bank holding companies without extending this authority to forward contracts for the delayed sale of commercial products (such as automobiles, consumer products, etc.) or real estate.

Several commenters requested that acting as a commodity pool operator ("CPO"), including acting as the general partner of a partnership that invests in commodities as well as futures and options on financial and nonfinancial commodities, be added to the list of permissible activities. The commenters noted that the Board recently permitted by order a bank holding company to act

as a CPO, subject to a number of limitations.[12/] Although some proposals to act as a CPO may involve a combination of permissible activities, certain proposals raise supervisory issues and open-end pool structures may raise Glass-Steagall Act issues. In addition, some proposals raise questions about the proper treatment of the CPO's interest in the commodity pool for capital adequacy purposes.[13/] These issues can be evaluated more effectively on a case-by-case basis through the application review process. Accordingly, the Board has determined not to add acting as a CPO as a separate activity on the laundry list at this time.

8. Investment or Trading Transactions as Principal

The final rule, as the proposal, incorporates decisions by the Board that permit bank holding companies broadly to invest as principal in derivatives on financial and nonfinancial commodities. The proposal would allow a bank holding company to invest or trade as principal in a 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.

[12/] See The Bessemer Group, Incorporated, 82 Federal Reserve Bulletin 569 (1996).

[13/] For example, the limitations in the case cited above included a requirement to consolidate, for regulatory capital purposes, the assets and liabilities of subsidiary partnerships for which a wholly owned subsidiary of the bank holding company would serve as a general partner. The subsidiary partnerships were to employ leverage (including margin debt and short sales) in making investments.

Some commenters were concerned that the proposal as worded would not include trading as principal in derivatives based on or linked to bank ineligible securities, such as certain equity index swaps or equity index futures contracts, an activity that the Board has approved by order. The final rule clarifies that a bank holding company may trade as principal a derivatives contract on an index of rates, prices or the value of any financial or nonfinancial asset or group of assets, so long as the contract requires cash settlement. This does not include acting as a dealer in options based on indexes of bank-ineligible securities when the options are traded on securities exchanges. These options are securities for purposes of federal securities laws and are bank-ineligible securities for purposes of the Glass-Steagall Act.[14/] Similarly, activities authorized by this rule do not include acting as a dealer in any other instruments that are bank-ineligible securities for purposes of section 20. Thus, dealing in securities, including acting as a market-maker, specialist or registered options trader on an exchange, would be governed by the Board's orders regarding bank-ineligible securities underwriting and dealing activities. Under the final rule, the three alternative conditions would not apply to derivative contracts based on an index, but would apply to all other derivative contracts.

Several commenters suggested that an additional alternative be added that permits trading as principal in a derivative contract that involves an asset that is a permissible investment for a national bank or for a bank holding company.

The final rule adopts a provision that would include any other instruments approved by the Board.

In addition, some commenters requested clarification that the alternative conditions apply only to a bank holding company's trading activities and not to investments for the company's own account. Other commenters maintained that trading for a bank holding company's own account should not be viewed as a nonbanking activity subject to section 4(c)(8) but as a servicing activity under section 4(c)(1)(C) of the BHC Act.

Bank holding companies have increasingly proposed to acquire companies engaged in, or to engage through an existing subsidiary in, derivatives trading

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[14/] See Swiss Bank Corporation, 82 Federal Reserve Bulletin 685 n. 8 (1996)

and investment activities that would be beyond the scope of investment or trading activities encompassed within the bank servicing exemption.[15/] The addition of proprietary trading activities to the regulation clarifies the permissibility of this activity as a separate business activity.

The final rule, as 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. To enable the regulation to remain current with relevant regulatory pronouncements regarding the permissible activities of banks, several commenters suggested that the proposed list of metals be expanded to include copper (recently permitted for national banks) and any other permissible investments for national banks or bank holding companies. In view of these comments, the final rule adds copper and includes any other metal approved by the Board.

Some commenters requested that the Board add to the regulatory laundry list underwriting and dealing to a limited extent in certain municipal revenue bonds, one-to-four family mortgage-related securities, consumer receivable securities, and commercial paper because the Board, by order, has permitted these activities. Several commenters also urged the Board to add accepting delivery of commodities to the list of activities because national banks may take delivery of physical commodities by warehouse receipt or "pass-through delivery" to another party when hedging financial exposures arising from otherwise permissible activities. The final rule does not expand the laundry list to include these activities because these activities raise issues involving risk management policies and procedures that are more appropriately addressed through the application review process.

In this regard, the Board believes that, at this time, all proposals to engage de novo or to make an initial acquisition of a company engaged in corporate debt and/or equity securities underwriting and dealing activities should be reviewed under the normal procedures, and not under the streamlined procedures. This will allow the System to conduct a review of the risk-management systems of the bank holding company in connection with the initial entry of a bank holding company into this activity. Bank holding companies that have already received Board approval to engage in these broad securities

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[15/] E.g., Swiss Bank Corporation, 81 Federal Reserve Bulletin 185 (1995).

activities may acquire companies engaged in these activities if the bank holding company and the proposed acquisition qualify for the streamlined procedure, unless the System notifies the company that the normal procedure should be used.

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 may provide management consulting services regarding financial, economic, accounting, or audit matters to any company. These are financial activities that are directly related to the activities and expertise of bank holding companies. Commenters discussing this issue agreed that this activity is closely related to banking for purposes of section 4(c)(8) of the BHC Act.

Second, for the reasons explained above, the final rule permits a bank holding company to derive up to 30 percent of its management consulting revenue from management consulting services provided to any customer on any matter. As noted above, commenters discussing this activity strongly supported this provision as necessary to permit bank holding companies to attract and retain the most qualified personnel, and to compete effectively against unregulated companies that offer a broad array of management consulting services to customers of bank holding companies. For the reasons explained above, the Board has determined not to raise the 30 percent limit on this basket of permitted incidental activities at this time, and will monitor the scope and nature of these activities.

Two restrictions have been retained governing interlocks with and investments in client companies. While several commenters argued for removal of these restrictions, the Board continues to believe that these limits are necessary in the context of management consulting arrangements in order to ensure that a bank holding company does not exercise control over a client company through a management consulting contract and to prevent conflicts of interest. These restrictions do not limit the ability of a bank holding company to provide management consulting services to an affiliate, which is a servicing

activity permitted under section 4(c)(1)(C) of the BHC Act.

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. Several commenters urged the Board to take a variety of steps to authorize broader insurance activities. The Board will continue to consider these suggestions in light of the specific terms of the BHC Act.

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 Board has adopted its proposal clarifying 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 final 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.

As explained above, 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. As explained above, most commenters addressing this activity strongly supported all of these changes and, in particular, the proposal to permit the conduct of some nonfinancial data processing activities as an incident to financial data processing activities.

D. Changes to Tying Restrictions

The Board has adopted significant amendments to its rules regarding tying arrangements. The amendments remove Board-imposed tying restrictions on bank holding companies and their nonbank subsidiaries; create exceptions from the statutory restriction on bank tying arrangements to allow banks greater flexibility to package products with their affiliates; and establish a safe harbor from the tying restrictions for certain foreign transactions. These amendments are designed to enhance competition in banking and nonbanking products and allow banks and their affiliates to provide more efficient and lower-cost service to customers.

Section 106 of the BHC Act Amendments of 1970 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.[16/] 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"). Although section 106 applies only when a bank offers the tying product, the Board in 1971 extended these special restrictions to bank holding companies and their nonbank subsidiaries.[17/]

Section 106 was adopted in 1970 when Congress expanded the authority of the Board to approve proposals by 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 create a competitive advantage for their affiliates in the new, nonbanking markets that they were being allowed to enter.[18/] Congress therefore imposed special limitations on tying by banks--restrictions beyond those imposed by the antitrust laws. Section 106 is a broader prohibition, 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 Board has authority to grant exceptions to section 106 and, in the past few years, has used its exemptive authority to allow banking organizations to package their products when doing so would benefit the organization and its customers without 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 final rule would build on this recent history by permitting broader categories of packaging arrangements that also do not raise the concerns that section 106 was intended to address.

[16/] 12 U.S.C. § 1972.

[17/] 36 FR 10777 (June 3, 1971).

[18/] See S. Rep. No. 1084, 91st Cong., 2d Sess. (1970).

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.[19/]

As noted in the preamble to the proposed rule, the Board has gained extensive experience with bank holding companies, their nonbank affiliates, and the markets in which they operate. Based on this experience, the Board has concluded that these nonbank companies do not possess the market power over credit or other unique competitive advantages that Congress assumed that banks enjoyed in 1970. Accordingly, the Board has decided 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 the non-bank-affiliated competitors of these entities.

Commenters discussing the tying proposal overwhelmingly supported the Board's proposal to rescind its regulatory extension of the anti-tying rules to nonbanks. Commenters noted that, in rescinding its rule, the Board would not be granting an "exception" to section 106, which never envisioned that nonbank affiliates would be covered by the special anti-tying rules applicable to banks, but rather returning the coverage of the statute to that intended by Congress. Commenters argued that the proposed rescission would benefit banking organizations and the public by permitting bank holding companies and their

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[19/] In recent years, the Board has enacted limited relief from the anti-tying restrictions on nonbanks within bank holding company structures. For example, the Board has permitted a nonbanking subsidiary to offer discounts on products and services based on the customer's obtaining some other product or service from that subsidiary or another nonbank affiliate. 12 CFR 225.7(b)(3). However, even with this relief, tying between a bank holding company or its nonbank subsidiary and an affiliated bank has remained restricted, as has any tying arrangement not limited to the offering of a discount.

nonbank subsidiaries to package products and services more flexibly--particularly in packages with products and services of bank affiliates--thereby enabling the provision of more efficient and lower-cost products and services to their business and retail customers.

Commenters also generally agreed that 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 non-bank-affiliated competitors currently enjoy. Some of these commenters noted that 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.

Only two commenters opposed the Board's proposal to rescind the regulatory extension of bank anti-tying rules to nonbank affiliates.[20/] One commenter, a law firm representing a nonbanking corporation, opposed the Board's proposal to free nonbank affiliates from the special tying rules applicable to banks, as well as the other proposed changes to the anti-tying regulation. This commenter stated that the proposed changes should not be adopted without a comprehensive study of their potential ramifications. The commenter also maintained that the Board's regulatory extension of the anti-tying rules to nonbank affiliates is consistent with the legislative history of section 106, which evinced concern over possible unfair business practices of nonbank affiliates as well as banks themselves. In addition, the commenter questioned whether the general antitrust laws and the nature of the competition faced by banking organizations would be adequate to prevent unfair or

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[20/] In addition, a community group generally opposed the Board's proposed changes to the tying rules on the basis of concerns about relationships between banks and their consumer finance company affiliates. These concerns focused on fair lending and equal credit opportunity, appropriate disclosure of referral fees and other matters, and compliance with various consumer lending statutes and regulations. The Board does not believe, and this commenter has provided no basis for concluding, that the anti-tying statute or regulations are intended to address or have the effect of addressing these concerns. Moreover, these concerns are already addressed by separate statutes and regulations, including the Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and Real Estate Settlement Procedures Act of 1974.

anti-competitive practices, and whether the proposal would produce efficiency, lower costs, and fair competition between banking and nonbanking organizations.[21/]

Another law firm, representing a group of insurance industry trade associations, also opposed the Board's proposal to remove the special anti-tying rules applicable to nonbank affiliates. This commenter maintained that the bank anti-tying rules should continue to apply to nonbank affiliates because these affiliates may appear to the public to be indistinguishable from the banks themselves and because the same public policy concern regarding banks' power over credit warrants the extension of the prophylactic rule for banks to entities having an affiliate relationship with banks.[22/]

The Board does not believe that these concerns warrant retention of special anti-tying rules for nonbank affiliates of banks. In particular, the Board's experience as regulator and supervisor of banks, bank holding companies, and their subsidiaries provides an adequate basis for judgments about the competitive

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[21/] With respect to fair competition between banking and nonbanking organizations, the commenter asserted that banking organizations have an inherent competitive advantage from being able to conduct the business of banking. This commenter also noted the increasing concentration of resources within the banking industry itself, and indicated that the existing anti-tying rules may have contributed to the competitive vitality of the markets in which nonbank affiliates operate.

[22/] This commenter also advanced several arguments for not rescinding these rules with respect to packaged offerings that include insurance products, specifically: 1) that such packaging arrangements may violate state insurance laws that prohibit insurance agents from offering rebates on the sale of insurance products; and 2) that permitting insurance premium payments as part of a discount package may similarly violate state anti-rebate and insurance advertising laws, and could result in customer confusion and a conflict with the Interagency Statement on Retail Sales of Nondeposit Investment Products. The commenter also argued that the proposal could enable banks to coerce customers to purchase insurance in order to obtain a loan, and that permitting a combination of insured deposit and uninsured investment products in a single package could obscure the differences between these products and produce confusion among customers of banking organizations.

nature of markets in which banking organizations operate. Commenters have not provided evidence to the contrary or proposed specific subjects for further study. Moreover, commenters opposing the proposal have produced no evidence that the antitrust rules and the nature of the nonbanking markets in which bank affiliates operate would not be sufficient to prevent unfair or anti-competitive practices, or that the proposed liberalization of the Board's tying rules would not yield efficiencies and corresponding lower costs for customers. The Board does not believe, and commenters have provided no basis for concluding, that affiliation with a bank creates a competitive advantage warranting the application of special bank anti-tying rules to nonbank affiliates.[23/] Finally, while the legislative history of section 106 may evince concern with the competitive practices of banks and their affiliates, the statute itself clearly applies only to tying by banks themselves.

For the foregoing reasons, the Board is rescinding its extension of bank anti-tying rules to bank holding companies and their nonbank subsidiaries.

2. Retain Limited Prohibition on Tying Arrangements Involving Electronic Benefit Transfer Services

In the proposed rule, the Board sought comment 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

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[23/] The Board also notes that these commenters have not provided any reason to conclude that an increased concentration of resources in the banking industry itself warrants an extension of anti-tying rules to the nonbanking markets in which bank affiliates operate.

Other matters raised by commenters also provide no basis for extending the special bank anti-tying rules to nonbank affiliates. The Board does not believe that the rescission of this extension or other aspects of the proposed rule would preempt state laws regarding insurance or other matters. Furthermore, concerns about possible customer confusion are effectively addressed through more direct means such as the Interagency Statement on Retail Sales of Nondeposit Investment Products. The Board also notes that section 106 would continue to prohibit banks from using their power over credit to induce customers to purchase insurance products.

Opportunity Reconciliation Act of 1996, signed into law on August 22, 1996, amended the Food Stamp Act of 1977 to prohibit tying the availability of electronic benefit transfer services to other point-of-sale services. Enforcement of the Food Stamp Act is assigned to the Secretary of Agriculture.[24/] 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.

Commenters either supported or expressly did not object to this limited retention of a special anti-tying rule for electronic benefit transfer services. Commenters acknowledged that the principle of competitive equality underlying the general rescission of special anti-tying rules for nonbank entities dictated retention of the special rules in this limited context.

The Board has decided to retain this restriction.

3. Treat Inter-affiliate Tying Arrangements the Same as Intra-bank Arrangements

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.[25/] 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 a customer and bank, the exception is limited in an important way: it does not extend to transactions involving products offered by affiliates.

The Board has adopted a "regulatory traditional bank product exception" that generally extends the statutory exception to transactions involving affiliates.

[24/] 104 Pub. L. 193, 110 Stat. 2105; 7 U.S.C. § 2016(i)(11).

[25/] 12 U.S.C. § 1972(1)(A).

However, 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. Second, the Board required that the arrangement consist of discounting the tying product rather than restricting its availability. However, as noted in the preamble to the proposed rule, Congress decided not to apply these two 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 those intra-bank transactions. Moreover, Congress has already extended the statutory traditional bank product exception to cover inter-affiliate transactions, without restriction, for savings associations and their affiliates.[26/] For these reasons, the Board proposed eliminating the above restrictions so that any tying arrangement within a banking organization would be permissible if the tied product is a loan, discount, deposit, or trust service.

Commenters discussing this proposal overwhelmingly supported this aspect of the proposal, agreeing with the Board that there is no reason to subject inter-affiliate tying arrangements to restrictions that are not applicable to intra-bank arrangements. Three commenters raised general objections to the elimination of these restrictions. These objections were similar to those advanced against the proposed rescission of the tying rules applicable to nonbank affiliates. The Board notes that, because insurance products are not among the traditional bank products listed in the statute or the rule, this aspect of the proposal would not enhance a banking organization's ability to leverage possible market power in other product markets to engage in anti-competitive behavior in insurance markets.

A substantial number of commenters urged the Board to adopt an expanded definition of the "traditional bank products" which may be tied to other offerings under the statutory and regulatory exceptions. Some of these commenters proposed a specific list of additional products--such as foreign exchange, interest rate swaps and other derivative products, and investment advisory services--to be exempted by the rule. Other commenters proposed a more general approach for expanding this definition: for example, exempting products authorized as part of the business of banking under relevant chartering laws. Others urged the Board to exempt all but a limited set of tying

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[26/] 12 U.S.C. § 1464(q)(1)(A).

arrangements from the statutory restrictions--for example, by covering only transactions where the tying product is a consumer or small business loan.[27/] The Board believes that these suggestions warrant serious consideration, but intends to study this issue and provide notice and seek comment before adopting any changes not suggested in the proposed rule.

For the foregoing reasons, the Board has decided to adopt the extension of the traditional bank product exception as proposed.

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

As noted above, section 106 prohibits not only tying arrangements but also reciprocity arrangements (conditioning the availability of or varying the consideration for one product on the providing of another by the customer).[28/] 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 product or service on the customer's providing to the bank some product or service "related to and usually provided in connection with" a loan, discount, deposit, or trust service.[29/] The Board noted in the proposed rule that it had received only one request to extend this exception, and commenters confirmed that these types of reciprocity arrangements are not common in the industry.

Like the statutory traditional bank product exception to the tying prohibition, this exception to the reciprocity prohibition does not apply to inter-affiliate transactions, and, in the proposed rule, the Board proposed to extend the statutory exception for traditional banking relationships to cover such inter-affiliate transactions. For reasons similar to those advanced with respect to the extension of the statutory exception for tying arrangements, most commenters discussing this aspect of the proposal strongly supported the extension of

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[27/] Some commenters also suggested that the Board issue interpretations to clarify the scope of the statutory list of four traditional bank products.

[28/] 12 U.S.C. § 1972(1)(C) and (D).

[29/] 12 U.S.C. § 1972(1)(C).

permitted reciprocity arrangements, while a small number of commenters opposed this aspect of the proposal. The opposing comments did not raise any objections specific to reciprocity arrangements.

For the foregoing reasons, and because the Board does not believe that inter-affiliate reciprocity arrangements pose any greater anti-competitive threat than similar intra-bank arrangements permitted by Congress, the Board is adopting substantially as proposed the extension of the statutory exception for certain reciprocity arrangements. The Board has decided to make technical changes to the proposed exception to make clear that the regulatory exception is co-extensive with the statutory exception.

5. Coverage of Foreign Transactions Under Section 106

In response to a request that the Board clarify whether section 106 restricts foreign transactions, the Board sought comment on whether it should establish a "safe harbor" with respect to some set of foreign transactions. In particular, the Board sought comment on whether the safe harbor should define "foreign transactions" according to the location of the customer, the location of the market where any potential anti-competitive effects would occur, or some other factor.

Federal legislation is presumed to apply only within the territorial jurisdiction of the United States, unless the legislation clearly expresses a contrary intent on the part of Congress. No such intent is evident in section 106.[30/] However, determining whether a series of transactions has sufficient connection to the United States to trigger section 106 can be a difficult process. The proposed safe harbor was intended to provide certainty with respect to a defined set of transactions. Thus, the proposed safe harbor was not intended to be an interpretation of section 106, as some transactions outside the safe harbor may not be covered by the statute.

Commenters addressing this issue overwhelmingly supported the creation of a safe harbor. Commenters argued that a safe harbor would provide needed certainty to banking organizations operating abroad and permit these

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[30/] See Gushi Bros. Co. v. Bank of Guam, 28 F.3d 1535, 1542-43 (9th Cir. 1994).

organizations to compete with foreign firms. One commenter noted that U.S. banks sometimes cannot participate in lending syndicates dominated by foreign banks because the loan agreement contains conditions that would violate section 106. Furthermore, in some countries it is customary for a financial advisor or credit provider to link services in formulating proposals and a U.S. bank's inability to do so places it at a competitive disadvantage.

In terms of how the safe harbor would be defined, commenters strongly urged that the locus of the customer be determinative. Commenters uniformly rejected any test based on the locus of any anti-competitive effects, on two grounds. First, such a test assumes that there will be anti-competitive effects from the tying arrangements, which is by definition true in the case of a Sherman Act violation but not necessarily true in the case of a violation of the per se prohibition on tying in section 106. Second, determining where a transaction has its effect can be a difficult process yielding no clear answer, and the test would therefore leave substantial uncertainty in terms of compliance.

Some commenters also urged the Board to exempt transactions to finance projects located outside the United States and transactions with foreign branches of U.S. companies.

A small number of commenters objected generally to this proposed change to the tying rules without providing any specific reason why a safe harbor for foreign transactions should not be adopted. One commenter maintained that a safe harbor was not necessary because relevant case law had provided sufficient clarity and certainty with respect to this question.

For the reasons advanced by commenters, the Board is adopting a "safe harbor" from the anti-tying rules for transactions with corporate customers that are incorporated or otherwise organized, and have their principal place of business, outside the United States, or with individuals who are citizens of a foreign country and are not resident in the United States. However, the safe harbor would not protect tying arrangements where the customer is a U.S.-incorporated division of a foreign company. Furthermore, the safe harbor would not shelter a transaction from other antitrust laws if they were otherwise applicable.

The Board agrees with commenters that some transactions with U.S.

persons may be so foreign in nature, because of the location of either the project that is the subject of the transaction or the customer's office that is entering into the transaction, that they do not raise the competitive concerns that section 106 or the antitrust laws were designed to address. The Board also believes, however, that many such foreign-based transactions do have competitive implications in the United States--for example, where a U.S. corporation seeks financing for a project abroad, and the bank seeks to tie this financing to an affiliate's U.S. securities underwriting services--and the Board does not believe that commenters have provided an adequate and clear basis for excluding such transactions from any "safe harbor" for foreign transactions with U.S. persons.

6. Technical Changes

The Board also is adopting a definition of "bank" for purposes of the anti-tying rules to clarify that any exemptions afforded to banks generally also would be applicable to credit card and other limited purpose institutions and to United States branches and agencies of foreign banks.[31/]

E. Other Changes.

1. Filings Under the Change in Bank Control Act

The final rule, as the proposal, reorganizes, clarifies, and simplifies the portion of Regulation Y that implements the Change in Bank Control Act ("CIBC Act"). The final rule 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.

In particular, the final rule reduces regulatory burden by reducing from two to one the number of times a person must receive permission under the CIBC Act to acquire shares of the same state member bank or bank holding

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[31/] One commenter urged that the safe harbor for combined-balance discounts be clarified by specifying that products offered by an affiliate of the bank may be included as eligible products. The Board notes that the proposed and final rule refer to "products specified by the bank", and do not contain any limitation with respect to the entity offering the product.

company. Specifically, the final rule eliminates the current requirement that all persons who have received authorization to control 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 acquiring control of 25 percent or more of the voting shares of the institution.

The Board has determined that this new rule will apply to any person who currently controls 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, unless the approval granted to the person specifically limited the amount of shares that the person may control or the person is otherwise notified in writing by the System that additional approval is required. 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 by requiring further review of the financial resources of the person as appropriate.

Commenters that discussed the CIBC Act proposal supported the proposed revisions. In particular, these commenters endorsed the elimination of the requirement to file a second notice to the Board upon exceeding 25 percent ownership of a member bank or bank holding company when a prior notice to acquire in excess of 10 percent had been filed and approved by the Board.

Commenters also supported the proposal to clarify certain terms used in the CIBC Act portion of the rule. The final rule adds definitions of key terms to clarify the scope of the regulation. In particular, the final rule defines the terms acting in concert and immediate family, and includes specific presumptions of concerted action, to clarify the rule and to provide guidance to acquirors. In addition, the final rule 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 final rule also reduces regulatory burden on persons whose ownership percentages increase as the result of an action outside the control of the person, such as a redemption of voting securities by the issuing bank or a sale of shares by a third party. 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.

In addition, the final rule provides for more flexible timing for newspaper announcements of filings under the CIBC Act by permitting notificants to publish the announcement up to 15 calendar days before submitting the filing. The newspaper notice requirement also is modified to eliminate the requirement that the notice include a statement of the percentage of shares proposed to be acquired.

Finally, the final rule adds a new section reflecting the stock loan reporting requirements in section 205 of the Federal Deposit Insurance Corporation Improvement Act as amended by section 2226 of the Regulatory Relief Act. Before the passage of the Regulatory Relief Act, all financial institutions were required to file reports documenting credit outstanding by the institution and its affiliates when the credit was secured by 25 percent or more of any class of voting securities of an insured depository institution. The Regulatory Relief Act limits this requirement to credit outstanding by foreign banks and their affiliates.

One commenter suggested that the Board require any person participating in a proxy solicitation to obtain prior approval under the CIBC Act and urged broadening the definition of persons who would be deemed to be acting in concert (and thus required to join in a CIBC Act filing) to include persons soliciting proxies. This commenter also suggested that the institution that is the target of a proxy solicitation be granted standing as a party to a CIBC Act filing, be furnished copies of all filings, and be permitted to submit comments.

The Board has not adopted these suggestions. The Board has long held, and a federal court has agreed, that the CIBC Act is not automatically triggered by the formation of a group for the purpose of acquiring proxies for voting shares and that private parties do not have legal standing to challenge agency action under the CIBC Act.[32/] The final rule provides for public notice of all CIBC Act filings (unless immediate or expeditious action is required) and permits any private party to submit comments for Board consideration. This approach is in keeping with the purpose of the CIBC Act, which is to permit the federal banking agencies to review changes in the ownership of banks and bank

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[32/] See Citizen First Bancorp, Inc. v. Harreld, 559 F.Supp. 867 (1982).

holding companies and is not intended to be a mechanism for private parties to frustrate contested acquisitions.

2. Notices of Changes in Directors and Senior Executive Officers

In addition to the BHC Act and the CIBC Act, Regulation Y implements section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires a state member bank or bank holding company (together, "regulated institutions") to give prior notice to the System before changing directors or senior executive officers under certain circumstances. The final rule has been modified in light of amendments to section 914 enacted by the Regulatory Relief Act and in cooperation with the staffs of the other federal financial institutions supervisory agencies, in an attempt to develop uniform procedures for requiring and reviewing section 914 notices.

As amended, section 914 no longer requires prior notice from regulated institutions chartered for less than two years or regulated institutions that underwent a change in control within two years. Accordingly, provisions in the proposed rule relating to these circumstances as triggering a section 914 notice have been deleted from the final rule.

Section 914 also was amended by the Regulatory Relief Act to permit the System to extend the 30-day prior notice period for an additional period not to exceed 60 days. The Board expects to continue to process most section 914 notices within 30 days and the final rule retains the 30-day prior notice period. In special circumstances, such as an incomplete administrative record, the final rule permits the System to extend the prior notice period for an additional 60 days as provided in section 914 after notifying the regulated institution or individual filing the notice of the extension and the reason for not processing the notice within 30 days.

In all waiver requests, the final rule continues to require that all information required to be filed under the rule be provided within the time period specified by the System. The final rule also adopts the System's current practice of granting individuals who are not proposed by management and who are elected as new directors of regulated institutions an automatic waiver of the 30-day prior notice requirement in order to serve immediately as board members. To qualify for an automatic waiver, the individual must also provide

the System with all information required to be filed under the rule within two business days after the individual's election. The System may issue a notice of disapproval within 30 days after a waiver request is granted or the election of an individual serving pursuant to an automatic waiver.

One commenter argued that the automatic waiver procedures should require an individual to resign as a director after a notice of disapproval has been issued by the System. While disapproval would require the individual to resign as a director, the final rule does not incorporate the suggestion because the System has sufficient enforcement authority under applicable law to remove a disapproved director from the board.

The final rule also makes other changes, such as modifications to the appeal procedure for a disapproved notice, that are intended to clarify the proposed rule.

3. Other Changes

The Board received three comments requesting that the Board expand its proposed presumption exempting testamentary trusts from the definition of "company" so as to exempt inter vivos (or living) trusts. Inter vivos trusts are trusts that are established by individuals during their lifetime to facilitate estate planning. The Board, on a case by case basis, has applied criteria similar to the criteria proposed in Regulation Y in determining whether an inter vivos trust is a "company" for purposes of the BHC Act. Accordingly, the final rule has been expanded to presume that an inter vivos trust is exempt from the definition of "company" if the trust meets the criteria in the final rule and is not otherwise found to be a business trust or company. The final rule also amends the time limit in which a trust must terminate to reflect that the BHC Act permits certain trusts to extend for 25 years.

The final rule also reduces from 30 to 15 the number of days notice required before a large stock redemption by a bank holding company, permits small bank holding companies to make stock redemptions without prior notice if the holding company meets certain leverage and capital requirements, and permits bank holding companies to take account of intervening new issues of stock in computing when a stock redemption notice must be filed.

In addition, the final rule adopts the changes enacted in the Regulatory Relief Act to the period for divesting certain shares acquired in satisfaction of a debt previously contracted. These changes permit the Board to extend the divestiture period, under certain circumstances, to a period of up to 10 years.

Moreover, the final rule deletes the provisions implementing section 2(g)(3) of the BHC Act, which have been repealed by the Regulatory Relief Act. The Board has also deleted references in Regulation Y to limitations on asset growth imposed on certain institution by the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat 552) because these limitations were removed by section 2304 of the Regulatory Relief Act.

Finally, the final rule adopts the proposed definitions of "class of voting securities" and "immediate family" and includes several other technical changes.

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 revisions to Regulation Y. As of September 30, 1996, the number of bank holding companies totalled 5,250.[33/] 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	3,874	5.2%[34/]
$150M - $300M	677	3.2%
greater than $300M	699	91.6%

The comprehensive revision to Regulation Y is intended to eliminate unnecessary burden for all bank holding companies, including smaller banking organizations. Included in the revision are expedited application/notice procedures with minimal information requirements for well-rated and well-run bank holding companies. The vast majority of bank holding companies would qualify to use the streamlined procedures, and it is estimated that more than 50 percent of the applications/notices reviewed by the Federal Reserve System during 1995 would have qualified for the new streamlined procedures. The revisions also include a reorganization and streamlining of the regulatory laundry list of permissible nonbanking activities, the removal of unnecessary and outmoded regulatory restrictions, and a waiver of filing requirements for bank

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[33/] 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.

[34/] 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.

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 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 reduces 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 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 final rule 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 the regulation, thereby improving the ability of all bank holding companies, including small organizations, to conduct business on a more cost-efficient basis.

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 rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, the following information collections unless it displays a currently valid OMB control number. The OMB control numbers are indicated below.

The collection of information requirements in this 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 Board received no comments that specifically addressed burden estimates.

The 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 rule, it is estimated that at least 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 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 final rule should result in a significant reduction in regulatory burden by eliminating the prior review and approval requirements for well-run bank holding companies to engage *de novo* in nonbanking activities that are permissible by Board regulation; streamlining the application process to engage *de novo* in nonbanking activities that are permissible only by Board order and to acquire nonbanking companies; and permitting bank holding companies to obtain approval at one time to engage in a preauthorized list of nonbanking activities. Thus, respondents that file the Application for Prior Approval To Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y-4; OMB No. 7100-0121) will experience a significant reduction in costs. 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 rule it is estimated that at least 50 percent of these respondents would meet the criteria to qualify either for elimination or for the filing of a streamlined application, representing 181 applications and 57 notifications. The average number of hours per response for the required post-consummation notice is 0.5 hours and for the required streamlined notice is 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 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 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 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 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 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 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 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 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.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0196), Washington, DC 20503.

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 amends 12 CFR Part 225 as follows:

PART 225--BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331-3351, 3907, and 3909.

2. Subpart A is revised to read as follows:

Subpart A--General Provisions

Sec.

225.1 Authority, purpose, and scope.
225.2 Definitions.
225.3 Administration.
225.4 Corporate practices.
225.5 Registration, reports, and inspections.
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Subpart A--General Provisions

§ 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

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

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 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); section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972); 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:

(1) Regulate the acquisition of control of banks by companies and individuals;

(2) Define and regulate the nonbanking activities in which bank holding companies and foreign banking organizations with United States operations may engage; and

(3) Set forth the procedures for securing approval for these 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. The Board's Regulation K governs certain nonbanking activities conducted by foreign banking organizations and certain foreign activities conducted by bank holding companies (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.

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

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

(12) Appendix D contains the Board's Capital Adequacy Guidelines for measuring tier 1 leverage for bank holding companies.

(13) Appendix E contains the Board's Capital Adequacy Guidelines for measuring market risk of 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 meaning as set forth in the relevant statutes.

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

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

(d)(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 or company, 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 or within 25 years;

(ii) Is a testamentary or inter vivos 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.

(4) Qualified limited partnerships exempt. Company does not include a qualified limited partnership, as defined in section 2(o)(10) of the BHC Act.

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

(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 part; 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 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 and qualifying foreign banking organization have the same meanings as provided in § 211.21(n) and § 211.23 of the Board's Regulation K (12 CFR 211.21(n) and 211.23).

(g) Insured depository institution includes an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) and a savings association.

(h) Lead insured depository institution means the largest insured depository institution controlled by the bank holding company as of the quarter ending immediately prior to the proposed filing, based on a comparison of the average total risk-weighted assets controlled during the previous 12-month period by each insured depository institution subsidiary of the holding company.

(i) 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.

(j) 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 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).

(k) 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.

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

(m) 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 that 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.

(n) 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.

(o) 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.

(p) 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.

(q)(1) 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 (o)(2)(i) of this section that affect solely the rights or preferences of the shares.

(r) Well-Capitalized -- (1) Bank holding company. In the case of a bank holding company[2/], well-capitalized means that:

[2/] For purposes of subparts A, B, and C, a bank holding company with consolidated assets under $150 million that is subject to the Small Bank Holding

(continued...)

(i) On a consolidated basis, the bank holding company maintains a total risk-based capital ratio of 10.0 percent or greater, as defined in Appendix A of this part;

(ii) On a consolidated basis, the bank holding company maintains a Tier 1 risk-based capital ratio of 6.0 percent or greater, as defined in Appendix A of this part; and

(iii) The bank holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure.

(2) Insured depository institution. In the case of an insured depository institution, well-capitalized means that the institution maintains at least the capital levels required to be "well-capitalized" under the capital adequacy regulations or guidelines applicable to the institution that have been adopted by the appropriate federal banking agency for the institution under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

(3) Foreign banks -- (i) Standards applied. For purposes of determining whether a foreign banking organization qualifies under paragraph (1):

(A) A foreign banking organization whose home country supervisor, as defined in § 211.21 of the Board's Regulation K (12 CFR 211.21), has adopted capital standards consistent in all respects with the Capital Accord of the Basle Committee on Banking Supervision (Basle Accord) may calculate its capital ratios under the home country standard; and

(B) A foreign banking organization whose home country supervisor has not adopted capital standards consistent in all respects with the Basle Accord shall obtain a determination from the Board that its capital is equivalent to the capital that would be required of a U.S. banking organization under paragraph (1) of this subsection.

[2/](...continued)
Company Policy Statement in Appendix C of this part will be deemed to be "well-capitalized" if the bank holding company meets the requirements for expedited/waived processing in Appendix C.

(ii) Branches and agencies. For purposes of determining, under paragraph (1), whether a branch or agency of a foreign banking organization is well-capitalized, the branch or agency shall be deemed to have the same capital ratios as the foreign banking organization.

(s) Well-managed -- (1) In general. A company, insured depository institution, or branch or agency of a foreign banking organization is well-managed if :

(i) At its most recent inspection or examination or subsequent review by the appropriate federal banking agency for the company or institution, the company or institution received:

(A) At least a satisfactory composite rating; and

(B) At least a satisfactory rating for management and for compliance, if such a rating is given; or

(ii) In the case of a company or insured depository institution that has not received an examination rating, the Board has determined, after a review of the managerial and other resources of the company or depository institution, that the company or institution qualifies for the streamlined procedures in subparts A, B, or C.

(2) Foreign banking organizations. A foreign banking organization shall qualify under this paragraph if the combined operations of the foreign banking organization in the United States have received at least a satisfactory composite rating at the most recent annual assessment.

§ 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 part: 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 bank holding company of its own

securities -- (1) Filing notice. Except as provided in paragraph (b)(6), 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) Contents 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 and sources of funding for 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) If the bank holding company has consolidated assets of $150 million or more, consolidated pro forma risk-based capital and leverage ratio calculations for the bank holding company as of the most recent quarter, and, if the redemption is to be debt funded, a parent-only pro forma balance sheet as of the most recent quarter; or

(B) If the bank holding company has consolidated assets of less than $150 million, a pro forma parent-only balance sheet as of the most recent quarter, and, if the redemption is to be debt funded, one-year income statement and cash flow projections.

(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. (i) 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.

(ii) In determining whether a proposal constitutes an unsafe or unsound practice, the Board shall 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. (i) 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.

(ii) The Board shall order a hearing within 10 calendar days of receipt of the 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).

(iii) 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) Both before and immediately after the redemption, the bank holding company is well-capitalized;

(ii) The bank holding company is well-managed; and

(iii) 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 (15 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) Suspicious activity 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 suspicious activity report 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 part 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 shall rely, as far as possible, on the reports of examination made by the primary federal or state supervisor of the subsidiary bank of the bank holding company or of the branch or agency of the foreign bank.

§ 225.6 Penalties for violations.

(a) Criminal and civil penalties. (1) 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.

(2) 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 those 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) of this section, a bank may:

(1) Extension to affiliates of statutory exceptions preserving traditional banking relationships. 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 loan, discount, deposit, or trust service from an affiliate of the bank; or

(ii) Provide to an affiliate of the bank some additional credit, property, or service that the bank could require to be provided to itself pursuant to section 106(b)(1)(C) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(1)(C)).

(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.

(3) Safe harbor for foreign transactions. Engage in any transaction with a customer if that customer is:

(i) A corporation, business, or other person (other than an individual) that:

(A) Is incorporated, chartered, or otherwise organized outside the United States; and

(B) Has its principal place of business outside the United States; or

(ii) An individual who is a citizen of a foreign country and is not resident in the United States.

(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 anti-competitive 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 anti-competitive practices.

(d) Extension of statute to 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) For purposes of this section, bank has the meaning given that term in section 106(a) of the Bank Holding Company Act Amendments of 1970

(12 U.S.C. 1971), but shall also include a United States branch, agency, or commercial lending company subsidiary of a foreign bank that is subject to section 106 pursuant to section 8(d) of the International Banking Act of 1978

(12 U.S.C. 3106(d)), and any company made subject to section 106 by

section 4(f)(9) or 4(h) of the BHC Act.

3. Subpart B is revised to read as follows:

Subpart B--Acquisition of Bank Securities or Assets

Sec.

225.11 Transactions requiring Board approval.

225.12 Transactions not requiring Board approval.

225.13 Factors considered in acting on bank acquisition proposals.

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

225.15 Procedures for other bank acquisition proposals.

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

225.17 Notice procedure for one-bank holding company formations.

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 subpart:

(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.

(1) 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.

(2) 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 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 this 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 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 and internal corporate reorganizations -- (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 the 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 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, if the transaction is 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 is 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, and 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, C, D, and E 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 paragraph (d)(2)(v) of this section, 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 (d)(3)(ii) of this section, any of the following transactions performed in the United States by a bank holding company:

(A) The merger of holding companies that are subsidiaries of the bank holding company;

(B) The formation of a subsidiary holding company;[1/]

(C) The transfer of control or ownership of a subsidiary bank or a subsidiary holding company between one subsidiary holding company and another subsidiary holding company or the bank holding company.

(ii) A transaction described in paragraph (d)(3)(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 lawfully 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) The bank holding company is not organized in mutual form; and

(D) Both before and after the transaction, the bank holding company meets the Board's Capital Adequacy Guidelines (Appendixes A, B, C, D, and E of this part).

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

(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 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 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 anti-competitive 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 banking organization, the foreign banking organization 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 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 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)).

(d) Conditional approvals. The Board may impose conditions on any approval, including conditions to address competitive, financial, managerial, safety and soundness, convenience and needs, compliance or other concerns, to ensure that approval is consistent with the relevant statutory factors and other provisions of the BHC Act.

§ 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 (c) of this section may satisfy the prior approval requirements of § 225.11 in connection with the acquisition of shares, assets or control of a bank, or a merger or consolidation between 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 (c) 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[2/] and identification of each banking market affected by the transaction;

(iii) A description of the effect of the transaction on the convenience and needs of the communities to be served and of the actions being taken by the bank holding company to improve the CRA performance of any insured depository institution subsidiary that does not have at least a satisfactory CRA performance rating at the time of the transaction;

(iv) Evidence that notice of the proposal has been published in accordance with § 225.16(b)(1);

(v)(A) If the bank holding company has consolidated assets of $150

[2/] If, in connection with a transaction under this subpart, any person or group of persons proposes to acquire control of the acquiring bank holding company for purposes of the Bank Control Act or § 225.41, the person or group of persons may fulfill the notice requirements of the Bank Control Act and § 225.43 by providing, as part of the submission by the acquiring bank holding company under this subpart, identifying and biographical information required in paragraph (6)(A) of the Bank Control Act (12 U.S.C. 1817(j)(6)(A)), as well as any financial or other information requested by the Reserve Bank under § 225.43.

million or more, an abbreviated consolidated pro forma balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated pro forma risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction;

(B) If the bank holding company has consolidated assets of less than $150 million, a pro forma parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, and a description of the purchase price, the terms and sources of funding for the transaction, and the sources and schedule for retiring any debt incurred in the transaction;

(vi) If the bank holding company has consolidated assets of less than $300 million, a list of and biographical information regarding any directors or senior executive officers of the resulting bank holding company that are not directors or senior executive officers of the acquiring bank holding company or of a company or institution to be acquired;

(vii) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis; and

(viii) The market indexes for each relevant banking market reflecting the pro forma effect of the transaction.

(2) Waiver of unnecessary information. The Reserve Bank may reduce the information requirements in paragraph (1) (v) through (viii) as appropriate.

(b)(1) 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 within 5 business days after the close of the public comment period. The Board and the Reserve Bank shall not approve any proposal under this section prior to the third business day following the close of the public comment period, unless an emergency exists that requires expedited or immediate action. The Board may extend the period for action under this section for up to 5

business days.

(2) 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 an application under § 225.15, the application shall be deemed accepted for purposes of § 225.15 as of the date that the notice was filed under this section.

(c) 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;

(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 risk-weighted 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. (i) Satisfactory examination ratings. 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 risk-weighted assets of insured depository institutions controlled by the holding company are well-managed;

(ii) No poorly managed institutions. No insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination

or subsequent review by the appropriate federal banking agency for the institution;

(iii) Recently acquired institutions excluded. Any insured depository institution that has been acquired by the bank holding company during the 12-month period preceding the date on which written notice is filed under paragraph (a) of this section may be excluded for purposes of paragraph (c)(2)(ii) if :

(A) The bank holding company has developed a plan acceptable to the appropriate federal banking agency for the institution to restore the capital and management of the institution; and

(B) All insured depository institutions excluded under this paragraph represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company;

(3) Convenience and needs criteria -- (i) Effect on the community. The record indicates that the proposed transaction would meet the convenience and needs of the community standard in the BHC Act; and

(ii) 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 risk-weighted assets of insured institutions controlled by the holding company have received a satisfactory or better composite rating at the most recent examination under the Community Reinvestment Act;

(4) Public comment. No comment that is timely and substantive as provided in § 225.16 is received by the Board or the appropriate Reserve Bank other than a comment that supports approval of the proposal;

(5) 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; and

(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;

(6) Size of acquisition -- (i) In general -- (A) Limited Growth. Except as provided in paragraph (ii), the sum of the aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes of this paragraph "other qualifying transactions" means any transaction approved under this section or § 225.23 during the 12 months prior to filing the notice under this section; and

(B) Individual size limitation. The total risk-weighted assets to be acquired do not exceed $7.5 billion;

(ii) Small bank holding companies. Paragraph (6)(i)(A) shall not apply if, immediately following consummation of the proposed transaction, the consolidated risk-weighted assets of the acquiring bank holding company are less than $300 million;

(7) Supervisory actions. During the 12-month period ending on the date on which the bank holding company proposes to consummate the proposed transaction, no formal administrative order, including a written agreement, cease and desist order, capital directive, prompt corrective action directive, asset maintenance agreement, or other formal enforcement action, is or was outstanding against the bank holding company or any insured depository institution subsidiary of the holding company, and no formal administrative enforcement proceeding involving any such enforcement action, order, or directive is or was pending;

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

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

(10) Notification. The acquiring bank holding company has not been notified by the Board, in its discretion, prior to the expiration of the period in paragraph (b)(1) of this section that an application under § 225.15 is required in order to permit closer review of any financial, managerial, competitive, convenience and needs or other matter related to the factors that must be considered under this part.

(d) 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 insured depository institutions 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 recommend in writing to the Board disapproval of the proposal prior to the expiration of the comment period described in paragraph (d)(2) of this section. In such event, any approval given under this section shall be revoked and, if required by section 3(b) of the BHC Act, the Board shall order a hearing on the proposal.

(4) Emergencies. Notwithstanding paragraphs (d)(2) and (d)(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.

(5) Primary banking supervisor. For purposes of this section and section § 225.15(b), 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;

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

(iii) The Director of the Office of Thrift Supervision, in the case of a savings association.

(e) Branches and agencies of foreign banking organizations. For purposes of this section, a U.S. branch or agency of a foreign banking organization shall be considered to be an insured depository institution. A U.S. branch or agency of a foreign banking organization shall be subject to paragraph (c)(3)(ii) only to the extent it is insured by the Federal Deposit Insurance Corporation in accordance with section 6 of the International Banking Act of 1978 (12 U.S.C. 3104).

§ 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 as of the date the application was filed 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 the acceptance date for 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 acceptance date for 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(f). The Board may, at any time, request additional information that it believes is necessary for its decision.

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

(a) In general. The provisions of this section 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 publish a notice 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) Contents 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;

(iii) Timing of publication. Each newspaper notice published in

connection with a proposal under this paragraph shall be published no more than 15 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 no more than 30 days;

(ii) Request for advance publication. A bank holding company may request that, during the 15-day period prior to filing a notice or application under § 225.14 or § 225.15, the Board publish notice of a proposal in the Federal Register. A request for advance Federal Register publication shall be made in writing to the appropriate Reserve Bank and shall 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 if the Board finds that immediate action is necessary to prevent the probable failure of an insured depository institution.

(c) Public comment -- (1) Timely comments. Interested persons may submit information and comments regarding a proposal filed under this subpart. A comment shall be considered timely for purposes of this subpart if the comment, together with all supplemental information, is submitted in writing in accordance with the Board's Rules of Procedure and received by the Board or the appropriate Reserve Bank prior to the expiration of the latest public comment period provided in subsection (b).

(2) Extension of comment period -- (i) In general. The Board may, in its discretion, extend the public comment period regarding any proposal submitted under this subpart.

(ii) Requests in connection with obtaining application or notice. In the event that an interested person has requested a copy of a notice or application submitted under this subpart, the Board may, in its discretion and based on the

facts and circumstances, grant such person an extension of the comment period for up to 15 calendar days.

(iii) Joint requests by interested person and acquiring company. The Board will grant a joint request by an interested person and the acquiring bank holding company for an extension of the comment period for a reasonable period for a purpose related to the statutory factors the Board must consider under this subpart.

(3) Substantive comment. A comment will be considered substantive for purposes of this subpart unless it involves individual complaints, or raises frivolous, previously-considered or wholly unsubstantiated claims or irrelevant issues.

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

(e) Hearings. As provided in section 3(b) of the BHC Act, the Board shall order a hearing on any application or notice under § 225.15 if the Board receives from the primary supervisor of the bank to be acquired, within the 30-day period specified in § 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 § 262.3(e) of the Rules of Procedure (12 CFR 262.3(e)).

(f) 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.

(g) 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 of 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 of this section.

(h) 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, if the Board has determined under paragraph (g) 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, if the

Board has determined under paragraph (g) of this section that an emergency exists requiring expeditious action; or

(3) On or after the 15th calendar day following the date of approval, if 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 the shorter waiting period.

§ 225.17 Notice procedure for one-bank holding company formations.

(a) Transactions that 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 will 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, will, following the reorganization, own or control 10 percent or more of any class of voting shares of the bank holding company, unless that shareholder or group of shareholders was authorized, after review under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) by the appropriate federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank;[4/]

[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.

[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

(continued...)

(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 received at least a composite "satisfactory" rating at its most recent examination, in the event that the bank was examined;

(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 incurs at the time of the reorganization, and the proposed means of retiring this debt, will not place undue burden on the holding company or its subsidiary on a pro forma basis;[5/]

(7) The holding company will 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 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 paragraph shall 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/](...continued)
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 will control a de novo bank), this requirement is satisfied if the proposal complies with the Board's policy statement on small bank holding companies (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 revised to read as follows:

Subpart C--Nonbanking Activities and Acquisitions by Bank Holding Companies

Sec.

225.21 Prohibited nonbanking activities and acquisitions; exempt bank holding companies.

225.22 Exempt nonbanking activities and acquisitions.

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

225.24 Procedures for other nonbanking proposals.

225.25 Hearings, alteration of activities, and other matters.

225.26 Factors considered in acting on nonbanking proposals.

225.27 Procedures for determining scope of nonbanking activities.

225.28 List of permissible nonbanking activities.

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 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 do not apply to a company exempt under this paragraph.

§ 225.22 Exempt nonbanking activities and acquisitions.

(a) Certain de novo activities. A bank holding company may, either directly or indirectly, engage de novo in any nonbanking activity listed in

§ 225.28(b) (other than operation of an insured depository institution) without obtaining the Board's prior approval if the bank holding company:

(1) Meets the requirements of paragraphs (c)(1), (2), and (6) of

§ 225.23;

(2) Conducts the activity in compliance with all Board orders and regulations governing the activity; and

(3) Within 10 business days after commencing the activity, provides written notice to the appropriate Reserve Bank describing the activity, identifying the company or companies engaged in the activity, and certifying that the activity will be conducted in accordance with the Board's orders and regulations and that the bank holding company meets the requirements of paragraphs (c)(1), (2), and (6) of § 225.23.

(b) 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 servicing activities 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.

(c) 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.

(d) 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 years. The Board may permit additional extensions for up to 5 years (for a total of 10 years), for shares, real estate or other assets where the

holding company demonstrates that each extension would not be detrimental to the public interest and either the bank holding company has made good faith attempts to dispose of such shares, real estate or other assets or disposal of the shares, real estate or other assets during the initial period would have been detrimental to the company.

(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 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 that represent 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 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 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 or is not required to obtain prior 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 risk-weighted 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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 certain nonbanking proposals by well-run bank holding companies.

(a) Filing of notice -- (1) Information required. A bank holding company that meets the requirements of paragraph (c) 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 that the Board has permitted by order or regulation (other than an insured depository institution)[1/], or a proposal to engage de novo, either directly or indirectly, in a nonbanking activity that the Board has permitted by order or by regulation, by providing the appropriate Reserve Bank with a written notice containing the following:

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

(ii) 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;

(iii) If the proposal involves an acquisition of a going concern:

(A) If the bank holding company has consolidated assets of $150 million or more, an abbreviated consolidated pro forma balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated pro forma risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired;

(B) If the bank holding company has consolidated assets of less than $150 million, a pro forma parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed

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[1/] A bank holding company may acquire voting securities or assets of a savings association or other insured depository institution that is not a bank by using the procedures in § 225.14 of subpart B if the bank holding company and the proposal qualify under that section as if the savings association or other institution were a bank for purposes of that section.

transaction, a description of the purchase price and the terms and sources of funding for the transaction and the sources and schedule for retiring any debt incurred in the transaction, and the total assets, off-balance sheet items, revenue and net income of the company to be acquired;

(C) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis;

(iv) Identification of the geographic markets in which competition would be affected by the proposal, a description of the effect of the proposal on competition in the relevant markets, a list of the major competitors in that market in the proposed activity if the affected market is local in nature, and, if requested, the market indexes for the relevant market; and

(v) A description of the public benefits that can reasonably be expected to result from the transaction.

(2) Waiver of unnecessary information. The Reserve Bank may reduce the information requirements in paragraphs (1)(iii) and (iv) as appropriate.

(b)(1) 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 § 225.24, within 12 business days following the filing of all of the information required in paragraph (a) of this section.

(2) Acceptance of notice if expedited procedure not available. If 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.

(c) 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;

(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;

(B) Well-capitalized insured depository institutions control at least 80 percent of the total risk-weighted 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 -- (i) Satisfactory examination ratings. 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 risk-weighted assets of insured depository institutions controlled by such holding company are well-managed;

(ii) No poorly managed institutions. No insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review by the appropriate federal banking agency for the institution.

(iii) Recently acquired institutions excluded. Any insured depository institution that has been acquired by the bank holding company during the 12-month period preceding the date on which written notice is filed under paragraph (a) of this section may be excluded for purposes of paragraph (c)(2)(ii) if:

(A) The bank holding company has developed a plan acceptable to the appropriate federal banking agency for the institution to restore the capital and management of the institution; and

(B) All insured depository institutions excluded under this paragraph represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company;

(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; and

(ii) The Board has not indicated that proposals to engage in the 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; and

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

(5) Size of acquisition -- (i) In general -- (A) Limited growth. Except as provided in paragraph (ii), the sum of aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes of this paragraph, "other qualifying transactions" means any transaction approved under this section or § 225.14 during the 12 months prior to filing the notice under this section;

(B) Consideration paid. The gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company; and

(C) Individual size limitation. The total risk-weighted assets to be acquired do not exceed $7.5 billion;

(ii) Small bank holding companies. Paragraph (5)(i)(A) shall not apply if, immediately following consummation of the proposed transaction, the consolidated risk-weighted assets of the acquiring bank holding company are less than $300 million;

(6) Supervisory actions. During the 12-month period ending on the date on which the bank holding company proposes to consummate the proposed transaction, no formal administrative order, including a written agreement, cease and desist order, capital directive, prompt corrective action directive, asset maintenance agreement, or other formal enforcement order is or was outstanding against the bank holding company or any insured depository institution subsidiary of the holding company, and no formal administrative enforcement proceeding involving any such enforcement action, order, or directive is or was pending; and

(7) Notification. The bank holding company has not been notified by the Board, in its discretion, prior to the expiration of the period in paragraph (b) that a notice under § 225.24 is required in order to permit closer review of any potential adverse effect or other matter related to the factors that must be considered under this part.

(d) Branches and agencies of foreign banking organizations. For purposes of this section, a U.S. branch or agency of a foreign banking organization shall be considered to be an insured depository institution.

§ 225.24 Procedures for other nonbanking proposals.

(a) Notice required for nonbanking activities. Except as provided in § 225.22 and § 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 a description of the activities to be conducted and the identity of the company that will conduct the activity.

(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 in each relevant market with relevant market indexes;

(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;

(iv) If the bank holding company has consolidated assets of $150 million or more:

(A) Parent company and consolidated pro forma balance sheets for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction;

(B) Consolidated pro forma risk-based capital and leverage ratio calculations for the acquiring bank holding company as of the most recent quarter; and

(C) A description of the purchase price and the terms and sources of funding for the transaction;

(v) If the bank holding company has consolidated assets of less than $150 million:

(A) A pro forma parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction; and

(B) A description of the purchase price and the terms and sources of funding for the transaction and, if the transaction is debt funded, one-year income statement and cash flow projections for the parent company, and the sources and schedule for retiring any debt incurred in the transaction;

(vi) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis; and

(vii) A description of the management expertise, internal controls and risk management systems that will be utilized in the conduct of the proposed activities; and

(viii) A copy of the purchase agreements, and balance sheet and income statements for the most recent quarter and year-end for any company to be acquired.

(3) Engaging in or acquiring company to engage in unlisted activities. A bank holding company seeking to engage de novo in, 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, if the Board previously determined by order that the activity is permissible for a bank holding company to conduct, a commitment to comply with all the conditions and limitations 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 request that Federal Register publication occur up to 15 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 or referral under this paragraph.

(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 shall notify the notificant and explain the reasons and the date by which the Board expects to act.

(ii) 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)(i) 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)(i) 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)(ii)(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 modify the information requirements under this section or at any time request any additional information that either believes is needed for a decision on any notice under this section.

(4) Tolling of period. The Board or the Reserve Bank 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 Hearings, alteration of activities, and other matters.

(a) 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(f) apply to notices under this subpart that involve hearings.

(b) Approval through failure to act. (1) Except as provided in paragraph (a) of this section or § 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 (b)(1) of this section, a notice shall be deemed complete at such time as it contains all information required by this subpart and all other information requested by the Board or the Reserve Bank.

(c) 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.

(d) Emergency savings association acquisitions. In the case of a notice to acquire a savings association, 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 notificant's performance 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.

(e) Conditional approvals. The Board may impose conditions on any approval, including conditions to address permissibility, financial, managerial, safety and soundness, competitive, compliance, conflicts of interest, or other concerns to ensure that approval is consistent with the relevant statutory factors and other provisions of the BHC Act.

§ 225.27 Procedures for determining scope of nonbanking activities.

(a) Advisory opinions regarding scope of previously approved nonbanking activities -- (1) Request for advisory opinion. Any person may submit a request to the Board for an advisory opinion regarding the scope of any permissible nonbanking activity. The request shall be submitted in writing to the Board and shall identify the proposed parameters of the activity, or describe the service or product that will be provided, and contain an explanation supporting an interpretation regarding the scope of the permissible nonbanking activity.

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

(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 for a Board determination 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 the 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 its subsidiary in accordance with 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 factoring, 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 the 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 the 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[2/] of 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.

[2/] 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.

(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);[3/]

(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.[4/]

(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;[5/]

[3/] 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.

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

[5/] The requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly, engage in operating, servicing, maintaining, or repairing leased property during the lease term. 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 servicing, repair, or maintenance of the leased vehicle during the lease term; (2) purchase parts and accessories in bulk or for an

(continued...)

(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)(iii)(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 savings association. Owning, controlling, or operating a savings association, if the savings association engages only in deposit-taking activities, 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 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

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[5/](...continued)
individual vehicle after the lessee has taken delivery of the vehicle; (3) provide 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.

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, investments, joint ventures, leveraged buyouts, recapitalizations, capital structurings, financing transactions and similar transactions, and conducting financial feasibility studies;[6/]

(iv) Providing information, statistical forecasting, and advice with respect to any transaction in foreign exchange, swaps, and similar transactions, commodities, and any forward contract, option, future, option on a future, and similar instruments;

(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 (including securities clearing and/or securities execution services on an exchange), 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

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

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 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[7/] 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; or

(B) Acting as a riskless principal in any transaction involving a bank-ineligible security for which the company or any of its affiliates acts as underwriter (during the period of the underwriting or for 30 days thereafter) or dealer.[8/]

(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, if the company engaged in the activity 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

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[7/] 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.

[8/] 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 the company or its affiliate does not enter price quotations on different sides of the market for a particular security during any two-day period.

merchant (FCM) for unaffiliated persons in the execution, clearance, or execution and clearance of any futures contract and option on a futures contract traded on an exchange in the United States or abroad if:

(A) The activity is conducted through a separately incorporated subsidiary of the bank holding company, which may engage in activities other than FCM activities (including, but not limited to, permissible advisory and trading activities); and

(B) The parent bank holding company does not provide a guarantee or otherwise become liable to the exchange or clearing association other than for those trades conducted by the subsidiary for its own account or for the account of any affiliate.

(v) Other transactional services. Providing to customers as agent transactional services with respect to swaps and similar transactions, any transaction described in paragraph (b)(8) of this section, any transaction that is permissible for a state member bank, and any other transaction involving a forward contract, option, futures, option on a futures or similar contract (whether traded on an exchange or not) relating to a commodity that is traded on an exchange.

(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) Investing and trading activities. Engaging as principal in:

(A) Foreign exchange;

(B) Forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on any rate, price,

financial asset (including gold, silver, platinum, palladium, copper, or any other metal approved by the Board), nonfinancial asset, or group of assets, other than a bank-ineligible security[9/], 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; and

(C) Forward contracts, options,[10/] futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on an index of a rate, a price, or the value of any financial asset, nonfinancial asset, or group of assets, if the contract requires cash settlement.

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

(9) Management consulting and counseling activities -- (i) Management consulting.

[9/] 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.

[10/] This reference does not include acting as a dealer in options based on indices of bank-ineligible securities when the options are traded on securities exchanges. These options are securities for purposes of the federal securities laws and bank-ineligible securities for purposes of section 20 of the Glass-Steagall Act, 12 U.S.C. 337. Similarly, this reference does not include acting as a dealer in any other instrument that is a bank-ineligible security for purposes of section 20. A bank holding company may deal in these instruments in accordance with the Board's orders on dealing in bank-ineligible securities.

(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

(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) of this section, 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

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[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).

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

(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

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[12/] 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)).

[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.

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

(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:

[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)(3) 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.

[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.

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

[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.

(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 the 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 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) of this section if the total annual revenue derived from those activities does not exceed 30 percent of the company's total annual revenues derived from data processing and data transmission activities.

5. Subpart D is amended as follows:

(A) Section 225.31, paragraph (d)(2)(ii), is amended by removing the words "as defined in 12 CFR 206.2(k)"; and

(B) Section 225.32 is removed.

6. Subpart E is revised to read as follows:

Subpart E - Change in Bank Control

Sec.

225.41 Transactions requiring prior notice.

225.42 Transactions not requiring prior notice.

225.43 Procedures for filing, processing, publishing, and acting on notices.

225.44 Reporting of stock loans.

Supart 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 the 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 that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the

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[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 person must file prior notice to the Board.

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 the 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 paragraph (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.

(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 shall 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 the institution commenced

business, if later), held power to vote 25 percent or more of any class of voting securities of the 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 of this part) 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 of this part), 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) Acquisition of voting securities through inheritance;

(ii) Acquisition of voting securities as a bona fide gift; and

(iii) 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) Acquisition of voting securities resulting from a redemption of voting securities by the issuing bank or bank holding company; and

(ii) 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 paragraphs (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 shall 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 begins 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 shall 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 shall be published no earlier than 15 calendar days before 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 shall 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 the name of each of the bank holding company's 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 paragraph (c)(5) of this section.

(3) Federal Register announcement. The Board shall, upon filing of a notice under this subpart, publish announcement in the Federal Register of receipt of the notice. The Federal Register announcement shall 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 paragraph (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 paragraphs (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 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 or newspaper publication requirements of this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing 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 paragraph (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period, as provided under paragraph (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 paragraph (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 paragraph (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 therefor 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 paragraph (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 foreign bank or affiliate of a foreign bank 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, shall file a consolidated report with the appropriate Reserve Bank for the state member bank.

(2) The foreign bank or its affiliate also shall file a copy of the report with its appropriate Federal banking agency.

(3) Any shares of the state member bank held by the foreign bank or any affiliate of the foreign bank as principal must be included in the calculation of the number of shares in which the foreign bank or its affiliate has a security interest for purposes of paragraph (a) of this section.

(b) Definitions. For purposes of paragraph (a) of this section:

(1) Foreign bank shall have the same meaning as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(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 foreign bank or any affiliate of a foreign bank 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 paragraph (a) of this section is not required if:

(1) The person or group of persons referred to in that paragraph 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 shall 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 foreign bank and any affiliate thereof.

(2) A foreign bank, or any affiliate of a foreign bank, shall file the consolidated report in writing within 30 days of the date on which the foreign bank or 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 foreign bank, or any affiliate thereof, that is supervised by the System and is required to report credit outstanding that is secured by the shares of an insured depository institution to another Federal banking agency also shall file a copy of the report with the appropriate Reserve Bank.

§ 225.51 [Removed]

7. Subpart F is amended by removing § 225.51.

8. Subpart G is amended by revising the heading to read as follows:

Subpart G--Appraisal Standards for Federally Related Transactions

9. Subpart H is revised to read as follows:

Subpart H--Notice of Addition or Change of Directors and Senior Executive Officers

§ 225.71 Definitions.

(a) Director means a person who serves on the board of directors of a regulated institution, except that this term does not include an advisory director who:

(1) Is not elected by the shareholders of the regulated institution;

(2) Is not authorized to vote on any matters before the board of directors or any committee thereof;

(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.

(b) Regulated institution means a state member bank or a bank holding company.

(c) 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, or who participates in, major policymaking decisions of the regulated institution.

(d) Troubled condition for a regulated institution 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 Uniform Financial Institutions 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 regulated institution. A regulated institution 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 institution, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

(1) The regulated institution 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;

(2) The regulated institution is in troubled condition; or

(3) The Board determines, in connection with its review of a capital restoration plan required under section 38 of the Federal Deposit Insurance Act

or subpart B of the Board's Regulation H, or otherwise, that such notice is appropriate.

(b) Prior notice by 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 regulated institution.

§ 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 and processing 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 regulated institution 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. The Board or Reserve Bank may extend the 30-day notice period for an additional period of not more than 60 days by notifying the regulated institution or individual filing the notice that the

period has been extended and stating the reason for not processing the notice within the 30-day notice period.

(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 and any extension as provided under paragraph (a)(3) of this section, unless the Board or Reserve Bank disapproves the notice before the end of the period.

(2) Prior to expiration of period. A proposed director or senior executive officer may begin service before the end of the 30-day period and any extension as provided under paragraph (a)(3) of this section, if the Board or the Reserve Bank notifies in writing the regulated institution or individual submitting the notice of the Board's or Reserve Bank's intention not to disapprove the notice.

(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 regulated institution or in the best interests of the public to permit the individual to be employed by, or associated with, the regulated institution. The notice of disapproval shall contain a statement of the basis for disapproval and shall be sent to the regulated institution and the disapproved individual.

(d) Appeal of a notice of disapproval -- (1) A disapproved individual or a regulated institution 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 or regulated institution 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 regulated institution 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 regulated institution or a bank controlled by a bank holding company;

(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 may serve as a director upon election to the board of directors of a regulated institution before the notice required under this subpart is provided if the individual:

(i) Is not proposed by the management of the regulated institution;

(ii) Is elected as a new member of the board of directors at a meeting of

the regulated institution; and

(iii) Provides 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. A waiver shall not affect the authority of the Board or Reserve Bank to disapprove a notice within 30 days after a waiver is granted under paragraph (f)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (f)(2) of this section.

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10. Section 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 that has a name 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 that has either the same name 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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§ 225.145 [Amended]

11. Section 225.145, paragraph (a) the fifth sentence is amended by removing the words "increasing their assets at an annual rate exceeding 7 percent during any 12-month period after August 10, 1988," and the last sentence by removing "225.51 and".

12. 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 and Managerial 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 holding company and its subsidiary bank or banks.

The Board believes that a high level of debt at the parent holding company 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 small bank holding companies demonstrate the ability to service acquisition debt without straining the capital of their subsidiary banks and, further, that such companies restore their ability to serve as a source of strength for their subsidiary banks within a relatively short period of time.

In the interest of continuing its policy of facilitating the transfer of ownership in banks without compromising bank safety and soundness, the Board has, as described below, adopted the following procedures and standards for the formation and expansion of small bank holding companies subject to this policy statement.

1. **Applicability of Policy Statement**

This policy statement applies only to bank holding companies with pro forma consolidated assets of less than $150 million that: (i) are not engaged in any nonbanking activities involving significant leverage[1/] and (ii) do not have a significant amount of outstanding debt that is held by the general public.

While this policy statement primarily applies to the formation of small bank holding companies, it also applies to existing small bank holding companies that wish to acquire an additional bank or company and to transactions involving changes in control, stock redemptions, or other shareholder transactions.[2/]

2. **Ongoing Requirements**

The following guidelines must be followed on an ongoing basis for all organizations operating under this policy statement.

[1/]A parent company that is engaged in significant off-balance sheet activities would generally be deemed to be engaged in activities that involve significant leverage.

[2/]The appropriate Reserve Bank should be contacted to determine the manner in which a specific situation may qualify for treatment under this policy statement.

A. Reduction in parent company leverage: Small bank holding companies are to reduce their parent company debt consistent with the requirement that all debt be retired within 25 years of being incurred. The Board also expects that these bank holding companies reach a debt to equity ratio of .30:1 or less within 12 years of the incurrence of the debt.[3/] The bank holding company must also comply with debt servicing and other requirements imposed by its creditors.

B. Capital adequacy: Each insured depository subsidiary of a small bank holding company is expected to be well-capitalized. Any institution that is not well-capitalized is expected to become well-capitalized within a brief period of time.

C. Dividend restrictions: A small bank holding company whose debt to equity ratio is greater than 1.0:1 is not expected to pay corporate dividends until such time as it reduces its debt to equity ratio to 1.0:1 or less and otherwise

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[3/]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 as defined 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 .30:1 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.

meets the criteria set forth in sections 225.14(c)(1)(ii), 225.14(c)(2), and 225.14(c)(7) of Regulation Y.[4/]

Small bank holding companies formed before the effective date of this policy statement may switch to a plan that adheres to the intent of this statement provided they comply with the requirements set forth above.

3. **Core Requirements for All Applicants**

In assessing applications or notices by organizations subject to this policy statement, the Board will continue to take into account a full range of financial and other information about the applicant, and its current and proposed subsidiaries, 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 following requirements:

A. Minimum down payment: The amount of acquisition debt should not exceed 75 percent of the purchase price of the bank(s) or company to be acquired. When the owner(s) of the holding company incurs debt to finance the purchase of the bank(s) or company, 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.

B. Ability to reduce parent company leverage: The bank holding

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[4/]Dividends may be paid by small bank holding companies with debt to equity at or below 1.0:1 and otherwise meeting the requirements of sections 225.14(c)(1)(ii), 225.14(c)(2), and 225.14(c)(7) 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 banks to be well-capitalized. It is expected that dividends will be eliminated if the holding company is (1) not reducing its debt consistent with the requirement that the debt to equity ratio be reduced to .30:1 within 12 years of consummation of the proposal or (2) not meeting the requirements of its loan agreement(s).

company must clearly be able to reduce its debt to equity ratio and comply with its loan agreement(s) as set forth in paragraph 2A above.

Failure to meet the criteria in this section would normally result in denial of an application.

4. **Additional Application Requirements for Expedited/Waived Processing**

A. Expedited notices under sections 225.14 and 225.23 of Regulation Y: A small bank holding company proposal will be eligible for the expedited processing procedures set forth in sections 225.14 and 225.23 of Regulation Y if the bank holding company is in compliance with the ongoing requirements of this policy statement, the bank holding company meets the core requirements for all applicants noted above, and the following requirements are met:

i. The parent bank holding company has a pro forma debt to equity ratio of 1.0:1 or less.

ii. The bank holding company meets all of the criteria for expedited action set forth in sections 225.14 or 225.23 of Regulation Y.

B. Waiver of stock redemption filing: A small bank holding company will be eligible for the stock redemption filing exception for well-capitalized bank holding companies contained in section 225.4(b)(6) if the following requirements are met:

i. The parent bank holding company has a pro forma debt to equity ratio of 1.0:1 or less.

ii. The bank holding company is in compliance with the ongoing requirements of this policy statement and meets the requirements of sections 225.14(c)(1)(ii), 225.14(c)(2), and 225.14(c)(7) of Regulation Y.

By order of the Board of Governors of the Federal Reserve System, February 19, 1997.

William W. Wiles
Secretary of the Board