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(1) The Board may impose any limitations or conditions on the conduct or the U.S. activities of the foreign bank or company or any of its affiliates as the Board finds to be appropriate and consistent with the purposes of the Bank Holding Company Act; and

(2) The foreign bank or company and its affiliates may not commence any additional activity in the United States or acquire control or shares of any company under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)) without prior approval from the Board.

(e) *Consequences of failure to correct conditions within 180 days*—(1) *Termination of Offices and Divestiture.* If a foreign bank or company does not correct the conditions described in a notice under paragraph (a) of this section within 180 days of receipt of the notice or such additional time as the Board may permit, the Board may order the foreign bank or company to terminate the foreign bank's U.S. branches and agencies and divest any commercial lending companies owned or controlled by the foreign bank or company. Such divestiture must be done in accordance with the terms and conditions established by the Board.

(2) *Alternative method of complying with a divestiture order.* A foreign bank or company may comply with an order issued under paragraph (e)(1) of this section by ceasing to engage (both directly and through any subsidiary that is not a depository institution or a subsidiary of a depository institution) in any activity that may be conducted only under section 4(k), (n), or (o) of the BHC Act (12 U.S.C. 1843(k), (n) and (o)). The termination of activities must be completed within the time period referred to in paragraph (e)(1) of this section and subject to terms and conditions acceptable to the Board.

(f) *Consultation with Other Agencies.* In taking any action under this section, the Board will consult with the relevant Federal and state regulatory authorities and the appropriate home country supervisor(s) of the foreign bank.

§ 225.94 What are the consequences of an insured branch or depository institution failing to maintain a satisfactory or better rating under the Community Reinvestment Act?

(a) *Insured branch as an ''insured depository institution.''* A U.S. branch of a foreign bank that is insured by the Federal Deposit Insurance Corporation shall be treated as an ''insured depository institution'' for purposes of § 225.84.

(b) *Applicability.* The provisions of § 225.84, with the modifications contained in this section, shall apply to a foreign bank that operates an insured branch referred to in paragraph (a) of this section or an insured depository institution in the United States, and any company that owns or controls such a foreign bank, that has made an effective election under § 225.92 in the same manner and to the same extent as they apply to a financial holding company.

INTERPRETATIONS

§ 225.101 Bank holding company's subsidiary banks owning shares of nonbanking companies.

(a) The Board's opinion has been requested on the following related matters under the Bank Holding Company Act of 1956.

(b) The question is raised as to whether shares in a nonbanking company which were acquired by a banking subsidiary of the bank holding company many years ago when their acquisition was lawful and are now held as investments, and which do not include more than 5 percent of the outstanding voting securities of such nonbanking company and do not have a value greater than 5 percent of the value of the bank holding company's total assets, are exempted from the divestment requirements of the Act by the provisions of section 4(c)(5) of the Act.

(c) In the Board's opinion, this exemption is as applicable to such shares when held by a banking subsidiary of a bank holding company as when held directly by the bank holding company itself. While the exemption specifically refers only to shares held or acquired by the bank holding company, the prohibition of the Act against retention of

nonbanking interests applies to indirect as well as direct ownership of shares of a nonbanking company, and, in the absence of a clear mandate to the contrary, any exception to this prohibition should be given equal breadth with the prohibition. Any other interpretation would lead to unwarranted results.

(d) Although certain of the other exemptions in section 4(c) of the Act specifically refer to shares held or acquired by banking subsidiaries, an analysis of those exemptions suggests that such specific reference to banking subsidiaries was for the purpose of excluding nonbanking subsidiaries from such exemptions, rather than for the purpose of providing an inclusionary emphasis on banking subsidiaries.

(e) It should be noted that the Board's view as to this question should not be interpreted as meaning that each banking subsidiary could own up to 5 percent of the stock of the same nonbanking organization. In the Board's opinion the limitations set forth in section 4(c)(5) apply to the aggregate amount of stock held in a particular organization by the bank holding company itself and by all of its subsidiaries.

(f) Secondly, question is raised as to whether shares in a nonbanking company acquired in satisfaction of debts previously contracted (d.p.c.) by a banking subsidiary of the bank holding company may be retained if such shares meet the conditions contained in section 4(c)(5) as to value and amount, notwithstanding the requirement of section 4(c)(2) that shares acquired d.p.c. be disposed of within two years after the date of their acquisition or the date of the Act, whichever is later. In the Board's opinion, the 5 percent exemption provided by section 4(c)(5) covers any shares, including shares acquired d.p.c., that meet the conditions set forth in that exemption, and, consequently, d.p.c. shares held by a banking subsidiary of a bank holding company which meet such conditions are not subject to the two-year disposition requirement prescribed by section 4(c)(2), although any such shares would, of course, continue to be subject to such requirement for disposition as may be prescribed by provisions of any applicable banking laws or by the appropriate bank supervisory authorities.

(g) Finally, question is raised as to whether shares held by banking subsidiaries of the bank holding company in companies holding bank premises of such subsidiaries are exempted from the divestment requirements by section 4(c)(1) of the Act. It is the Board's view that section 4(c)(1), exempting shares owned or acquired by a bank holding company in any company engaged solely in holding or operating properties used wholly or substantially by any subsidiary bank, is to be read and interpreted, like section 4(c)(5), as applying to shares owned indirectly by a bank holding company through a banking subsidiary as well as to shares held directly by the bank holding company. A contrary interpretation would impair the right that member banks controlled by bank holding companies would otherwise have to invest, subject to the limitations of section 24A of the Federal Reserve Act, in stock of companies holding their bank premises; and such a result was not, in the Board's opinion, intended by the Bank Holding Company Act.

[21 FR 10472, Dec. 29, 1956. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.102 Bank holding company indirectly owning nonbanking company through subsidiaries.

(a) The Board of Governors has been requested for an opinion regarding the exemptions contained in section 4(c)(5) of the Bank Holding Company Act of 1956. It is stated that Y Company is an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting securities of any company and do not include any asset having a value greater than 5 per centum of the value of the total assets of X Corporation, a bank holding company. It is stated that direct ownership by X Corporation of voting shares of Y Company would be exempt by reason of section 4(c)(5) from the prohibition of section 4 of the Act against ownership by bank holding companies of nonbanking assets.