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(c) A bank holding company or a bank subsidiary that acquired direct or indirect ownership or control of 50 percent or more of any such class of equity securities prior to January 9, 1968, is not required to divest to a level below 50 percent. A bank that acquired 50 percent or more prior to January 9, 1968, may become a subsidiary in a holding company system without any necessity for divesting to a level below 50 percent: *Provided*, That such action does not result in the bank holding company acquiring control of a percentage greater than that controlled by such bank.

(12 U.S.C. 248. Interprets 12 U.S.C. 1843, 15 U.S.C. 682)

[33 FR 6967, May 9, 1968. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.112 Indirect control of small business concern through convertible debentures held by small business investment company.

(a) A question has been raised concerning the applicability of provisions of the Bank Holding Company Act of 1956 to the acquisition by a bank holding company of stock of a small business investment company (''SBIC'') organized pursuant to the Small Business Investment Act of 1958 (''SBI Act'').

(b) As indicated in the interpretation of the Board (§ 225.107) published at 23 FR 7813, it is the Board's opinion that, since stock of an SBIC is eligible for purchase by national banks and since section 4(c)(4) of the Holding Company Act exempts stock eligible for investment by national banks from the prohibitions of section 4 of that Act, a bank holding company may lawfully acquire stock in such an SBIC.

(c) However, section 304 of the SBI Act provides that debentures of a small business concern purchased by a small business investment company may be converted at the option of such company into stock of the small business concern. The question therefore arises as to whether, in the event of such conversion, the parent bank holding company would be regarded as having acquired ''direct or indirect ownership or control'' of stock of the small business concern in violation of section 4(a) of the Holding Company Act.

(d) The Small Business Investment Act clearly contemplates that one of the primary purposes of that Act was to enable SBICs to provide needed equity capital to small business concerns through the purchase of debentures convertible into stock. Thus, to the extent that a stockholder in an SBIC might acquire indirect control of stock of a small business concern, such control appears to be a natural and contemplated incident of ownership of stock of the SBIC. The Office of the Comptroller of the Currency has informally indicated concurrence with this interpretation insofar as it affects investments by national banks in stock of an SBIC.

(e) Since the exception as to stock eligible for investment by national banks contained in section 4(c)(4) of the Holding Company Act was apparently intended to permit a bank holding company to acquire any stock that would be eligible for purchase by a national bank, it is the Board's view that section 4(a)(1) of the Act does not prohibit a bank holding company from acquiring stock of an SBIC, even though ownership of such stock may result in the acquisition of indirect ownership or control of stock of a small business concern which would not itself be eligible for purchase directly by a national bank or a bank holding company.

[24 FR 1584, Mar. 4, 1959. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.113 Services under section 4(a) of Bank Holding Company Act.

(a) The Board of Governors has been requested for an opinion as to whether the performance of certain functions by a bank holding company for four banks of which it owns less than 25 percent of the voting shares is in violation of section 4(a) of the Bank Holding Company Act.

(b) It is claimed that the holding company is engaged in ''managing'' four nonsubsidiary banks, for which services it receives ''management fees.'' Specifically, the company engages in the following activities for the four nonsubsidiary banks: (1) Establishment and supervision of loaning policies; (2) direction of the purchase and sale of investment securities; (3)

selection and training of officer personnel; (4) establishment and enforcement of operating policies; and (5) general supervision over all policies and practices.

(c) The question raised is whether these activities are prohibited by section 4(a)(2) of the Bank Holding Company Act, which permits a bank holding company to engage in only three categories of business: (1) Banking; (2) managing or controlling banks; and (3) furnishing services to or performing services for any bank of which the holding company owns or controls 25 percent or more of the voting shares.

(d) Clearly, the activities of the company with respect to the four nonsubsidiary banks do not constitute ''banking.'' With respect to the business of ''managing or controlling'' banks, it is the Board's view that such business, within the purview of section 4(a)(2), is essentially the exercise of a broad governing influence of the sort usually exercised by bank stockholders, as distinguished from direct or active participation in the establishment or carrying out of particular policies or operations. The latter kinds of activities fall within the third category of businesses in which a bank holding company is permitted to engage. In the Board's view, the activities enumerated above fall in substantial part within that third category.

(e) Section 4(a)(2), like all other sections of the Holding Company Act, must be interpreted in the light of all of its provisions, as well as in the light of other sections of the Act. The expression ''managing * * * banks,'' if it could be taken by itself, might appear to include activities of the sort enumerated. However, such an interpretation of those words would virtually nullify the last portion of section 4(a)(2), which permits a holding company to furnish services to or perform services for ''any bank of which it owns or controls 25 per centum or more of the voting shares.''

(f) Since Congress explicitly authorized the performance of services for banks that are at least 25 percent owned by a holding company, it obviously intended that the holding company should not perform services for banks in which it owns less than 25 percent of the voting shares. However, if the second category—''managing or controlling banks''—were interpreted to permit the holding company to perform services for any bank, including a bank in which it held less than 25 percent of the stock (or no stock whatsoever), the last clause of section 4(a)(2) would be meaningless.

(g) It is principally for this reason—that is, to give effective meaning to the final clause of section 4(a)(2)—that the Board interprets ''managing or controlling banks'' in that provision as referring to the exercise of a stockholder's management or control of banks, rather than direct and active participation in their operations. To repeat, such active participation in operations falls within the third category (''furnishing services to or performing services for any bank'') and consequently may be engaged in only with respect to banks in which the holding company ''owns or controls 25 per centum or more of the voting shares.''

(h) Accordingly, it is the Board's conclusion that, in performing the services enumerated, the bank holding company is ''furnishing services to or performing services for'' the four banks referred to. Under the Act such furnishing or performing of services is permissible only if the holding company owns or controls 25 percent of the voting shares of each bank receiving such services, and, since the company owns less than 25 percent of the voting shares of these banks, it follows that these activities are prohibited by section 4(a)(2).

(i) While this conclusion is required, in the Board's opinion, by the language of the statute, it may be noted further that any other conclusion would make it possible for bank holding company or any other corporation, through arrangements for the ''managing'' of banks in the manner here involved, to acquire effective control of banks without acquiring bank stocks and thus to evade the underlying objectives of section 3 of the Act.

[25 FR 281, Jan. 14, 1960. Redesignated at 36 FR 21666, Nov. 12, 1971]