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§ 225.121 Acquisition of Edge corporation affiliate by State member banks of registered bank holding company.

(a) The Board has been asked whether it is permissible for the commercial banking affiliates of a bank holding company registered under the Bank Holding Company Act of 1956, as amended, to acquire and hold the shares of the holding company's Edge corporation subsidiary organized under section 25(a) of the Federal Reserve Act.

(b) Section 9 of the Bank Holding Company Act amendments of 1966 (Pub. L. 89–485, approved July 1, 1966) repealed section 6 of the Bank Holding Company Act of 1956. That rendered obsolete the Board's interpretation of section 6 that was published in the March 1966 Federal Reserve Bulletin, page 339 (§ 225.120). Thus, so far as Federal Banking law applicable to State member banks is concerned, the answer to the foregoing question depends on the provisions of section 23A of the Federal Reserve Act, as amended by the 1966 amendments to the Bank Holding Company Act. By its specific terms, the provisions of section 23A do not apply to an affiliate organized under section 25(a) of the Federal Reserve Act.

(c) Accordingly, the Board concludes that, except for such restrictions as may exist under applicable State law, it would be legally permissible by virtue of paragraph 20 of section 9 of the Federal Reserve Act for any or all of the State member banks that are affiliates of a registered bank holding company to acquire and hold shares of the Edge corporation subsidiary of the bank holding company within the amount limitation in the last sentence of paragraph 12 of section 25(a) of the Federal Reserve Act.

(12 U.S.C. 24, 248, 335, 371c, 611, 618)

[31 FR 10263, July 29, 1966. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.122 Bank holding company ownership of mortgage companies.

(a) The Board of Governors recently considered whether a bank holding may acquire, either directly or through a subsidiary, the stock of a so-called ''mortgage company'' that would be operated on the following basis: The company would solicit mortgage loans on behalf of a bank in the holding company system, assemble credit information, make property inspections and appraisals, and secure title information. The company would also participate in the preparation of applications for mortgage loans, which it would submit, together with recommendations with respect to action thereon, to the bank, which alone would decide whether to make any or all of the loans requested. The company would in addition solicit investors to purchase mortgage loans from the bank and would seek to have such investors contract with the bank for the servicing of such loans.

(b) Under section 4 of the Bank Holding Company Act (12 U.S.C. 1843), a bank holding company is generally prohibited from acquiring ''direct or indirect ownership'' of stock of nonbanking corporations. The two exceptions principally involved in the question presented are with respect to (1) stock that is eligible for investment by a national bank (section 4(c)(5) of the Act) and (2) shares of a company ''furnishing services to or performing services for such bank holding company or its banking subsidiaries'' (section 4(c)(1)(C) of the Act).

(c) The Board has previously indicated its view that a national bank is forbidden by the so-called ''stock-purchase prohibition'' of paragraph ''Seventh'' of section 5136 of the Revised Statutes (12 U.S.C. 24) to purchase ''for its own account * * * any shares of stock of any corporation'' except (1) to the extent permitted by specific provisions of Federal law or (2) as comprised within the concept of ''such incidental powers as shall be necessary to carry on the business of banking'' referred to in the first sentence of said paragraph ''Seventh''. There is no specific statutory provision authorizing a national bank to purchase stock in a mortgage company, and in the Board's view such purchase may not properly be regarded as authorized under the ''incidental powers'' clause. (See 1966 Federal Reserve Bulletin 1151; 12 CFR 208.119.) Accordingly, a bank holding company may not acquire stock in a mortgage

company on the basis of the section 4(c)(5) exemption.

(d) However, the Board does not believe that such conclusion prejudices consideration of the question whether such a company is within the section 4(c)(1)(C) ''servicing exemption''. The basic purpose of section 4 of the Act is to confine a bank holding company's activities to the management and control of banks. In determining whether an activity in which a bank could itself engage is within the servicing exemption, the question is simply whether such activity may appropriately be considered as ''furnishing services to or performing services for'' a bank.

(e) As indicated in the Board's interpretation published in the 1958 Federal Reserve Bulletin at page 431 (12 CFR 225.104), the legislative history of the servicing exemption indicates that it includes the following activities: ''auditing, appraising, investment counseling'' and ''advertising, public relations, developing new business, organization, operations, preparing tax returns, and personnel''. The legislative history further indicates that some other activities also are within the scope of the exemption. However, the types of servicing permitted under such exemption must be distinguished from activities of a ''financial fiduciary, or insurance nature'', such as those that might be considered for possible exemption under section 4(c)(8) of the Act.

(f) In considering the interrelation of these exemptions in the light of the purpose of the prohibition against bank holding company interests in nonbanking organizations, the Board has concluded that the appropriate test for determining whether a mortgage company may be considered as within the servicing exemption is whether the company will perform as principal any banking activities—such as receiving deposits, paying checks, extending credit, conducting a trust department, and the like. In other words, if the mortgage company is to act merely as an adjunct to a bank for the purpose of facilitating the banks operations, the company may appropriately be considered as within the scope of the servicing exemption.[1]

(g) On this basis the Board concluded that, insofar as the Bank Holding Company Act is concerned, a bank holding company may acquire, either directly or through a subsidiary, the stock of a mortgage company whose functions are as described in the question presented. On the other hand, in the Board's view, a bank holding company may not acquire, on the basis of the servicing exemption, a mortgage company whose functions include such activities as extending credit for its own account, arranging interim financing, entering into mortgage service contracts on a fee basis, or otherwise performing functions other than solely on behalf of a bank.

(12 U.S.C. 248)

[32 FR 15004, Oct. 3, 1967, as amended at 35 FR 19662, Dec. 29, 1970. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.123 Activities closely related to banking.

(a) Effective June 15, 1971, the Board of Governors has amended § 225.4(a) of Regulation Y to implement its regulatory authority under section 4(c)(8) of the Bank Holding Company Act. In some respects activities determined by the Board to be closely related to banking are described in general terms that will require interpretation from time to time. The Board's views on some questions that have arisen are set forth below.

(b) Section 225.4(a) states that a company whose ownership by a bank holding company is authorized on the basis of that section may engage solely in specified activities. That limitation refers only to activities the authority for which depends on section 4(c)(8) of the Act. It does not prevent a holding company from establishing one subsidiary

[1] Insofar as the 1958 interpretation referred to above suggested that the branch banking laws are an appropriate general test for determining the scope of the servicing exemption, such interpretation is hereby modified. In view of the different purposes to be served by the branch banking laws and by section 4 of the Bank Holding Company Act, the Board has concluded that basing determinations under the latter solely on the basis of determinations under the former is inappropriate.