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business of the company being acquired.

(d) In some cases it may be difficult, due to the wide variety of circumstances involving possible acquisition of assets, to determine whether such acquisitions require prior Board approval. Bank holding companies are encouraged to contact their local Reserve Bank for guidance where doubt exists as to whether such an acquisition is in the ordinary course of business or an acquisition, in whole or in part, of a going concern.

[39 FR 35128, Sept. 30, 1974, as amended at Reg. Y, 57 FR 28779, June 29, 1992]

§ 225.133 Computation of amount invested in foreign corporations under general consent procedures.

For text of this interpretation, see § 211.111 of this subchapter.

[40 FR 43199, Sept. 19, 1975]

§ 225.134 Escrow arrangements involving bank stock resulting in a violation of the Bank Holding Company Act.

(a) In connection with a recent application to become a bank holding company, the Board considered a situation in which shares of a bank were acquired and then placed in escrow by the applicant prior to the Board's approval of the application. The facts indicated that the applicant company had incurred debt for the purpose of acquiring bank shares and immediately after the purchase the shares were transferred to an unaffiliated escrow agent with instructions to retain possession of the shares pending Board action on the company's application to become a bank holding company. The escrow agreement provided that, if the application were approved by the Board, the escrow agent was to return the shares to the applicant company; and, if the application were denied, the escrow agent was to deliver the shares to the applicant company's shareholders upon their assumption of debt originally incurred by the applicant in the acquisition of the bank shares. In addition, the escrow agreement provided that, while the shares were held in escrow, the applicant could not exercise voting or any other ownership rights with respect to those shares.

(b) On the basis of the above facts, the Board concluded that the company had violated the prior approval provisions of section 3 of the Bank Holding Company Act (''Act'') at the time that it made the initial acquisition of bank shares and that, for purposes of the Act, the company continued to control those shares in violation of the Act. In view of these findings, individuals and bank holding companies should not enter into escrow arrangements of the type described herein, or any similar arrangement, without securing the prior approval of the Board, since such action could constitute a violation of the Act.

(c) While the above represents the Board's conclusion with respect to the particular escrow arrangement involved in the proposal presented, the Board does not believe that the use of an escrow arrangement would always result in a violation of the Act. For example, it appears that a transaction whereby bank shares are placed in escrow pending Board action on an application would not involve a violation of the Act so long as title to such shares remains with the seller during the pendency of the application; there are no other indicia that the applicant controls the shares held in escrow; and, in the event of a Board denial of the application, the escrow agreement provides that the shares would be returned to the seller.

[41 FR 9859, Mar. 8, 1976. Correctly designated at 41 FR 12009, Mar. 23, 1976]

§ 225.136 Utilization of foreign subsidiaries to sell long-term debt obligations in foreign markets and to transfer the proceeds to their United States parent(s) for domestic purposes.

For text of this interpretation, see § 211.112 of this subchapter.

[42 FR 752, Jan. 4, 1977]

§ 225.137 Acquisitions of shares pursuant to section 4(c)(6) of the Bank Holding Company Act.

(a) The Board has received a request for an interpretation of section 4(c)(6) of the Bank Holding Company Act