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§ 250.181 Reports of change in control of bank management incident to a merger.

(a) A State member bank has inquired whether Pub. L. 88–593 (78 Stat. 940) requires reports of change in control of bank management in situations where the change occurs as an incident in a merger.

(b) Under the Bank Merger Act of 1960 (12 U.S.C. 1828(c)), no bank with Federal deposit insurance may merge or consolidate with, or acquire the assets of, or assume the liability to pay deposits in, any other insured bank without prior approval of the appropriate Federal bank supervisory agency. Where the bank resulting from any such transaction is a State member bank, the Board of Governors is the agency that must pass on the transaction. In the course of consideration of such an application, the Board would, of necessity, acquire knowledge of any change in control of management that might result. Information concerning any such change in control of management is supplied with each merger application and, in the circumstances, it is the view of the Board that the receipt of such information in connection with a merger application constitutes compliance with Pub. L. 88–593. However, once a merger has been approved and completely effectuated, the resulting bank would thereafter be subject to the reporting requirements of Pub. L. 88–593.

(12 U.S.C. 1817)

§ 250.182 Terms defining competitive effects of proposed mergers.

Under the Bank Merger Act (12 U.S.C. 1828(c)), a Federal Banking agency receiving a merger application must request the views of the other two banking agencies and the Department of Justice on the competitive factors involved. Standard descriptive terms are used by the Board, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency. The terms and their definitions are as follows:

(a) The term *monopoly* means that the proposed transaction must be disapproved in accordance with 12 U.S.C. 1828(c)(5)(A).

(b) The term *substantially adverse* means that the proposed transaction would have anticompetitive effects which preclude approval unless the anticompetitive effects are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served as specified in 12 U.S.C. 1828(c)(5)(B).

(c) The term *adverse* means that proposed transaction would have anticompetitive effects which would be material to the decision but which would not preclude approval.

(d) The term *no significant effect* means that the anticompetitive effects of the proposed transaction, if any, would not be material to the decision.

(12 U.S.C. 1828(c))

[45 FR 45257, July 3, 1980]

§ 250.200 Investment in bank premises by holding company banks.

(a) The Board of Governors has been asked whether, in determining under section 24A of the Federal Reserve Act (12 U.S.C. 371d) how much may be invested in bank premises without prior Board approval, a State member bank, which is owned by a registered bank holding company, is required to include indebtedness of a corporation, wholly owned by the holding company, that is engaged in holding premises of banks in the holding company system.

(b) Section 24A provides, in part, as follows:

> Hereafter * * * no State member bank, without the approval of the Board of Governors of the Federal Reserve System, shall (1) invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank or (2) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation which is an affiliate of the bank, as defined in section 2 of the Banking Act of 1933, as amended [12 U.S.C. 221a], will exceed the amount of the capital stock of such banks.

(c) A corporation that is owned by a holding company is an ''affiliate of each of the holding company's majority-owned banks as that term is defined in said section 2. Therefore, under the explicit provisions of section 24A,

each State member bank, any part of whose premises is owned by such an affiliate, must include the affiliate's total indebtedness in determining whether a proposed premises investment by the bank would cause the aggregate figure to exceed the amount of the bank's capital stock, so that the Board's prior approval would be required. Where the affiliate holds the premises of a number of the holding company's banks, the amount of the affiliate's indebtedness may be so large that Board approval is required for every proposed investment in bank premises by each majority-owned State member bank, to which the entire indebtedness of the affiliate is required to be attributed. The Board believes that, in these circumstances, individual approvals are not essential to effectuate the purpose of section 24A, which is to safeguard the soundness and liquidity of member banks, and that the protection sought by Congress can be achieved by a suitably circumscribed general approval.

(d) Accordingly the Board hereby grants general approval for any investment or loan (as described in section 24A) by any State member bank, the majority of the stock of which is owned by a registered bank holding company, if the proposed investment or loan will not cause either (1) all such investments and loans by the member bank (together with the indebtedness of any bank premises subsidiary thereof) to exceed 100 percent of the bank's capital stock, or (2) the aggregate of such investments and loans by all of the holding company's subsidiary banks (together with the indebtedness of any bank premises affiliates thereof) to exceed 100 percent of the aggregate capital stock of said banks.

(12 U.S.C. 221a, 371d)

§ 250.220 Whether member bank acting as trustee is prohibited by section 20 of the Banking Act of 1933 from acquiring majority of shares of mutual fund.

(a) The Board recently considered whether section 20 of the Banking Act of 1933 (12 U.S.C. 377) would prohibit a member bank, while acting as trustee of a tax exempt employee benefit trust or trusts, from, under the following circumstances, acquiring a majority of the shares of an open-end investment company (''Fund'') registered under the Investment Company Act of 1940, or more than 50 percent of the number of Fund's shares voted at the preceding election of directors of the Fund.

(b) The bank has acted as trustee, since December 1963, pursuant to a trust agreement with a county medical society to administer its group retirement program, under which individual members of the society could participate in accordance with the provisions of the Self-Employed Individuals Tax Retirement Act of 1962 (commonly referred to as ''H.R. 10'').

(c) Under the trust agreement as presently constituted, each employer, who is a participating member of the medical society, directs the bank to invest his contributions to the retirement plan in such proportions as he may elect in insurance or annuity contracts or in a diversified portfolio of securities and other property. The diversified portfolio held by the bank is invested and administered by the bank solely at the direction of a committee of the medical society.

(d) It has now been proposed that the trust agreement be amended to provide that all investments constituting the trust fund, apart from insurance and annuity contracts, will be made exclusively in shares of a single open-end investment company to be named in the trust agreement and that the assets constituting the diversified portfolio now held by the bank, as trustee, will be exchanged for the Fund's shares. The bank will, in addition to holding the shares of the Fund, allocate income and dividends to the accounts of the various participants in the retirement program, invest and reinvest income and dividends, and perform other ministerial functions.

(e) In addition, it is proposed to amend the trust agreement so that voting of the shares held by the bank as trustee will be controlled exclusively by the participants. Under the proposed amendment, the bank will sign all proxies prior to mailing them to the participants,

it being intended that the Participant(s) shall vote the proxies notwithstanding the