reflected in the books and records of the institution should not control the application of *D'Oench* or the statutory provisions.

In analyzing the propriety of asserting the *D'Oench* or the statutory provisions, at least the following three general factors should be considered in preparation for seeking approval from Washington:

* To what extent is the purpose of the statute regulatory, rather than remedial? If the statute simply imposes regulatory or mandatory requirements for a transaction, such as a filing requirement or maximum fee for services, assertion of *D'Oench* or the statutory provisions is unlikely to be successful.

* To what extent is the application of the statute premised upon facts that are not reflected in the books and records of the institution? If the state statute requires the existence and/or maintenance of certain facts, but those facts are not recorded in the institution's records, then *D'Oench* or the statutory provisions may be applicable.

* To what extent do the facts involve circumstances where the opposing party failed to take reasonable steps to document some necessary requirement or participated in some scheme or arrangement that would tend to mislead the banking authorities.

Examples Requiring Washington Approval:

1. A priority dispute arises involving a mechanic's lien against property on which the FDIC is attempting to foreclose. An attempt to persuade a court that the mechanic's lien is a form of secret agreement under *D'Oench*, which, if given priority over the interests of the FDIC, will tend to diminish or defeat the value of the asset may not be appropriate. In this example, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

2. State law requires insurance companies doing business in the state to deposit funds with the Commissioner of Insurance. Further, the law provides that the deposit cannot be levied upon by creditors or claimants of the insurance company. An insurance company purchases a certificate of deposit from an institution and assigns it to the Commissioner. At the same time a document is executed entitled ''Requisition to the Bank'' which states that the institution would not release the CD funds without authorization of the Commissioner. Subsequently the insurance company borrows money from the institution. After the loan goes into default, the institution does not roll the CD over, but rather credits the proceeds to the loan account. The institution then fails and the Commissioner files a proof of claim with the FDIC seeking payment on the CD. The FDIC may not defend the suit by claiming that the assignment documents did not meet the requirements of section 1823(e). In this example, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

3. The FDIC attempts to collect on a note which the failed institution acquired from a mortgage broker. The note is at a 15% interest rate and the mortgage broker charged six and one half points. State law provides that interest shall be no more than 13% and that no more than one point may be charged. The FDIC may not defend the borrower's counterclaim of a usurious loan by asserting *D'Oench* or the statutory provisions. Here too, Washington approval must be obtained before asserting *D'Oench* or the statutory provisions.

g. Section 1823(e)'s Contemporaneous Requirement

This requirement of section 1823(e) may not be asserted to invalidate a good faith workout or loan modification agreement where the sole issue is whether the contemporaneous requirement of section 1823(e) is met. Where there is an agreement which otherwise satisfies the remaining requirements of the statute, but was not executed contemporaneously with the acquisition of the asset, in most circumstances the statutory provisions should not be asserted. This applies only to workouts or loan modifications done by the failed institution prior to receivership. The assertion of the section 1823(e) contemporaneous requirement should be considered principally where the facts demonstrate that the workout or restructure was entered into in bad faith and in anticipation of institution failure.

Washington approval must be obtained before asserting *D'Oench* or the statutory provisions in these cases.

6. *Procedures To Obtain Washington Approval*

DRR Operations: When facts involving the possible assertion of *D'Oench* or the statutory provisions arise, Legal should be consulted. When the assertion of *D'Oench* or statutory provisions requires Washington approval, as outlined above, prior approval must be received from the Deputy Director—Operations or his designee in Washington in all such cases. Such approval must be obtained by preparation of a memorandum identifying the facts of the case forwarded through Legal Division procedures to the Deputy Director—Operations or his designee.

DRR Asset Management: When facts involving the possible assertion of *D'Oench* or the statutory provisions arise, Legal should be consulted. When the assertion of *D'Oench* or the statutory provisions requires Washington approval, as outlined above, Legal Division procedures should be followed for referral to Washington. Washington Legal will consult with Washington DRR where appropriate.

Legal: Each attorney must carefully review the facts of each instance where the assertion of *D'Oench* or the statutory provisions is being considered under revised Litigation Procedure 3 (LP 3). All cases requiring consultation or approval within these Guidelines and/or PS must be referred to Washington pursuant to LP3 procedures.

These Guidelines are intended only to improve the FDIC's review and management of utilization of *D'Oench* or the statutory provisions. The Guidelines do not create any right or benefit, substantive or procedural, that is enforceable at law, in equity, or otherwise by any party against the FDIC, its officers, employees, or agents, or any other person. The Guidelines shall not be construed to create any right to judicial review, settlement, or any other right involving compliance with its terms.

[FR Doc. 97–3190 Filed 2–7–97; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 97–02]

McKenna Trucking Company, Inc. v. Maersk Incorporated; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by McKenna Trucking Company, Inc. (''Complainant'') against Maersk Incorporated (''Respondent'') was served February 5, 1997. Complainant alleges that Respondent has violated sections 10(b)(1), (4), (6), (10), (11), and (12) of the Shipping Act of 1984, 46 U.S.C. app. sections 1709(1), (4), (6), (10), (11), and (12), by receiving rebates of intermodal trucking charges, thereby charging, demanding, collection and receiving greater compensation for the transportation of property than the rates shown in its service contracts, and subjecting complainant to an unreasonable refusal to deal, while continuing to charge shippers the higher, listed rate as a portion of the total through rate.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on

the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 5, 1998, and the final decision of the Commission shall be issued by June 5, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 97–3206 Filed 2–7–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. BanPonce Financial Corp., Popular International Bank, Inc., and BanPonce Financial Corp, Wilmington, Delaware; to acquire 100 percent of the voting shares of Seminole National Bank, Sanford, Florida.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with Gulf South Bancshares, Inc., Gretna, Louisiana, and thereby indirectly acquire Gulf South Bank and Trust Company, Gretna, Louisiana.

2. Whitney Holding Corporation, New Orleans, Louisiana; to acquire 100 percent of the voting shares of Merchants National Bank of Mississippi, Gulfport, Mississippi (in organization).

3. Whitney Holding Corporation; to merge with Merchants Bancshares, Inc., Gulfport, Mississippi, and thereby indirectly acquire Merchants Bank & Trust Company, Bay Saint Louis, Mississippi.

Board of Governors of the Federal Reserve System, February 4, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–3165 Filed 2–7–97; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Creditanstalt-Bankverein, Vienna, Austria; to engage *de novo* in making equity investments either directly or through a wholly-owned U.S. subsidiary in diversified partnerships, limited liability companies, corporations, and investment funds that engage in activities designed to promote community welfare, including developing, and/or acquiring and owning interest in, certain affordable rental housing properties, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

2. The Toronto-Dominion Bank, Toronto, Canada, and Waterhouse Investor Services, Inc. New York, New York; to engage through their wholly-owned subsidiary, Waterhouse Securities, Inc., New York, New York (''Company''), in the purchase and sale of securities on the order of customers as riskless principal. *See The Bank of New York Company, Inc.*, 82 Fed. Res. Bull. 748 (1996); *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989). Company would conduct this activity in accordance with the framework of limitations established in the Board's prior orders. *See Order Revising the Limitations Applicable to Riskless Principal Activities*, 82 Fed. Res. Bull. 759 (1996).

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101