

FEDERAL RESERVE BANK OF SAN FRANCISCO
101 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94105

December 5, 2003

**BANKING SUPERVISION AND REGULATION:
CHANGE IN BANK CONTROL**

To State Member Banks,
Bank Holding Companies,
and Others Concerned,
in the Twelfth Federal Reserve District

Guidance on Change in Bank Control Procedures (SR 03-19)

The Federal Reserve Bank is issuing this SR letter to emphasize the importance of the requirements for filing a notice under the Change in Bank Control Act. Recently, there have been some inadvertent incidents of unauthorized changes of ownership involving state member banks and bank holding companies. It is recognized that the complexity of an ownership position sometimes does not lend itself to easy interpretation of the requirements to file a notice. In situations in which it is unclear whether a notice is required, the potential filer(s) or the affected state member bank or bank holding company is encouraged to contact staff at a Federal Reserve Bank or the Board for guidance. This SR letter identifies when an individual or other affected party should contact the Federal Reserve Bank regarding the filing of a notice under the Change in Bank Control Act and the Board's implementing regulations.

Transactions Requiring Prior Notice

Section 225.41 of Regulation Y sets forth the specific types of transactions that require prior notice under the Change in Bank Control Act. Prior notice is required by any person (acting directly or indirectly) that seeks to acquire control of a state member bank or bank holding company. A "person" may include an individual, a group of individuals acting in concert, or certain entities (e.g., corporations, partnerships, trusts) that own shares of banking organizations but that do not qualify as bank holding companies. A person acquires "control" of a banking organization whenever the person acquires ownership, control, or the power to vote 25 percent or more of any class of voting securities of the institution. Section 225.41 of Regulation Y outlines certain other "rebuttable" presumptions of control that also may require the filing of a notice, including (under certain circumstances) a proposed acquisition that would result in the person owning or controlling the power to vote 10 percent or more of any class of voting securities.

The Federal Reserve Bank generally must be given 60 days prior written notice of a proposed acquisition of a controlling ownership interest.¹ A change in bank control notice should be filed with the Federal Reserve Bank in the district where the banking organization to be acquired is located. The notice should include biographical and financial information on the filer(s); details of the proposed acquisition; information on any proposed structural, managerial, or financial changes that would affect the banking organization to be acquired; and other relevant information required by the Federal Reserve Bank.

¹ Section 225.43 of Regulation Y sets forth the procedures for filing, reviewing, publishing, and acting on notices. Regulation Y provides definitions for the relevant terms and describes relevant timeframes and procedures. Related policy statements provide further interpretations of when a notice is required. The link is http://www.federalreserve.gov/regulations/title12/sec225/12cfr225_01.htm.

The primary forms to be completed as a part of a notice are the “Interagency Biographical and Financial Report” form and the “Interagency Notice of Change in Control.” The forms are available through the Federal Reserve Bank’s and on the Board’s public website at <http://www.federalreserve.gov/generalinfo/applications/afi/>.

Filers are requested to consult with the appropriate Federal Reserve Bank to confirm what specific information should be included in a particular notice. The Federal Reserve Bank will provide specialized publication material that will assist the filer(s) in placing a complete announcement of the proposed acquisition in the appropriate newspaper of general circulation. After reviewing the submitted information, the Federal Reserve Bank may initiate name checks with certain other U.S. government agencies (including law enforcement) on some or all of the individuals related to the proposal. The information received from those name checks will be used to further the assessment of the relevant statutory factors, including the competence, experience, integrity, and financial ability of the individual filers.

Commitments and Conditions for Approval

Approvals granted by the Federal Reserve under the Change in Bank Control Act may be subject to commitments or conditions that require the filer to consult with appropriate Federal Reserve Bank staff before acquiring further shares of the subject banking organization. The Board or the Federal Reserve Bank also may impose restrictions on the acquisition of additional shares by any person who already controls an institution. The imposition of such commitments, conditions, or limitations is intended to ensure that statutory factors remain consistent with approval.

Transactions Not Requiring Prior Notice

Section 225.42 of Regulation Y sets forth the transactions that do not require any notice under the Change in Bank Control Act or that require after-the-fact notice. The transactions that do not require any notice to the Federal Reserve Bank include, but are not limited to the following:

- (i) The acquisition of additional shares if the acquirer is deemed to already have control of the banking organization
- (ii) Any acquisition subject to approval under the Bank Holding Company Act or Bank Merger Act
- (iii) Receipt of voting securities as a result of a stock dividend (if the proportional interest of the recipient remains substantially the same)

The transactions that require after-the-fact notice include, among others, the acquisition of voting securities through inheritance, as a *bona fide* gift, or in satisfaction of a debt previously contracted in good faith. In these latter situations, the appropriate Federal Reserve Bank must be notified within 90 days after the acquisition, and the acquirer must provide any relevant information requested by the Federal Reserve Bank.

Unauthorized or Undisclosed Changes in Bank Control

In some instances, a person acquires control of a banking organization without submitting the prior or after-the-fact notice required by Regulation Y. These unauthorized or undisclosed changes in bank control may not be known to the person, the state member bank, or the bank holding company, but rather are discovered by Federal Reserve Bank examiners during an inspection or examination of the affected institution. In most cases, such a violation of the Change in Bank Control Act is addressed by the person immediately filing a notice to the Federal Reserve Bank requesting authority to retain the acquired shares.² The filing should include an explanation of the circumstances that resulted in

² A violation also may be addressed through two other means. The affected party may either (i) submit, for the Federal Reserve Bank’s approval, a specific plan for the prompt termination of the control relationship, or (ii) contest the preliminary determination of a control relationship by filing a response that sets forth the facts and circumstances in support of the party’s position that no control exists or, if appropriate, presenting such views orally to Federal Reserve Bank staff.

the violation, and a description of the actions that have been (or will be) taken by the filer(s) to ensure no further violations of the statute. While the burden to file a timely change in bank control notice is placed on the person(s) acquiring control, the subject banking organization may have better information than the individual(s) regarding current ownership positions, including shareholder lists. In view of this, it is important that state member banks and bank holding companies be familiar with the regulations and policies governing changes in bank control, and when possible to share such information with shareholders with significant ownership positions.

Violations of the Change in Bank Control Act

The Federal Reserve Bank has enforcement jurisdiction over those persons who file or should file notices under the Change in Bank Control Act. Accordingly, violations of the requirement to file a change in bank control notice may result in the Federal Reserve Bank taking enforcement action against the relevant person(s) in appropriate circumstances, including those involving willful or negligent misconduct. Violations may result in the person(s) being subject to a variety of sanctions, including the assessment of a civil money penalty. Federal Reserve Banks should report violations of which they are aware to staff in the Board's Legal Division and the Board's Division of Banking Supervision and Regulation in order to ensure that appropriate corrective action is taken.

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Additional Information

All circulars and documents are available on the Internet through the Federal Reserve Bank of San Francisco's Internet site, at <http://www.frbsf.org/banking/letters>. Paper copies of the notice (SR 03-19) are available from our Corporate Services Department. To request copies to be sent by mail, please call (415) 974-2060.

For additional information about these procedures, please contact our Banking Supervision and Regulation Department at (415) 974-3013.