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to customers in the situations described above, at the time the service is provided the bank holding company should instruct its officers and employees to caution customers to read the prospectus of the investment company before investing and must advise customers in writing that the investment company's shares are not insured by the Federal Deposit Insurance Corporation, and are not deposits, obligations of, or endorsed or guaranteed in any way by, any bank, unless that happens to be the case. The holding company or nonbank subsidiary must also disclose in writing to the customer the role of the company or affiliate as adviser to the investment company. These disclosures may be made orally so long as written disclosure is provided to the customer immediately thereafter. To the extent that a bank owned by a bank holding company engages in providing advisory or brokerage services to bank customers in connection with an investment company advised by the bank holding company or a nonbank affiliate, but is not required by the bank's primary regulator to make disclosures comparable to the disclosures required to be made by bank holding companies providing such services, the bank holding company should require its subsidiary bank to make the disclosures required in this paragraph to be made by a bank holding company that provides such advisory or brokerage services.

(i) Acting in such capacities as registrar, transfer agent, or custodian for an investment company is not a selling activity and is permitted under § 225.4(a)(4) of Regulation Y. However, in view of potential conflicts of interests, a bank holding company which acts both as custodian and investment adviser for an investment company should exercise care to maintain at a minimal level demand deposit accounts of the investment company which are placed with a bank affiliate and should not invest cash funds of the investment company in time deposit accounts (including certificates of deposit) of any bank affiliate.

[37 FR 1464, Jan. 29, 1972, as amended by Reg. Y, 57 FR 30391, July 9, 1992; 61 FR 45875, Aug. 30, 1996; Reg. Y, 62 FR 9343, Feb. 28, 1997]

## 12 CFR Ch. II (1-1-06 Edition)

### § 225.126 Activities not closely related to banking.

Pursuant to section 4(c)(8) of the Bank Holding Company Act and § 225.4(a) of Regulation Y, the Board of Governors has determined that the following activities are not so closely related to banking or managing or controlling banks as to be a proper incident thereto:

(a) Insurance premium funding—that is, the combined sale of mutual funds and insurance.

(b) Underwriting life insurance that is not sold in connection with a credit transaction by a bank holding company, or a subsidiary thereof.

(c) Real estate brokerage (see 1972 Fed. Res. Bulletin 428).

(d) Land development (see 1972 Fed. Res. Bulletin 429).

(e) Real estate syndication.

(f) Management consulting (see 1972 Fed. Res. Bulletin 571).

(g) Property management (see 1972 Fed. Res. Bulletin 652).

[Reg. Y, 37 FR 20329, Sept. 29, 1972; 37 FR 21938, Oct. 17, 1972, as amended at 54 FR 37302, Sept. 8, 1989]

### § 225.127 Investment in corporations or projects designed primarily to promote community welfare.

(a) Under § 225.25(b)(6) of Regulation Y, a bank holding company may, in accordance with the provisions of § 225.23, engage in “making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas.” The Board included that activity among those the Board has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, in order to permit bank holding companies to fulfill their civic responsibilities. As indicated hereinafter in this interpretation, the Board intends § 225.25(b)(6) to enable bank holding companies to take an active role in the quest for solutions to the Nation's social problems. Although the interpretation primarily focuses on low- and moderate-income housing, it is not intended to limit projects under § 225.25(b)(6) to that area. Other investments primarily designed to promote

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community welfare are considered permissible, but have not been defined in order to provide bank holding companies flexibility in approaching community problems. For example, bank holding companies may utilize this flexibility to provide new and creative approaches to the promotion of employment opportunities for low-income persons. Bank holding companies possess a unique combination of financial and managerial resources making them particularly suited for a meaningful and substantial role in remedying our social ills. Section 225.25(b)(6) is intended to provide an opportunity for them to assume such a role.

(b) Under the authority of § 225.25(b)(6), a bank holding company may invest in community development corporations established pursuant to Federal or State law. A bank holding company may also participate in other civic projects, such as a municipal parking facility sponsored by a local civic organization as a means to promote greater public use of the community's facilities.

(c) Within the category of permissible investments under § 225.25(b)(6) are investments in projects to construct or rehabilitate multifamily low- or moderate-income housing with respect to which a mortgage is insured under section 221(d)(3), 221(d)(4), or 236 of the National Housing Act (12 U.S.C. 1701) and investments in projects to construct or rehabilitate low- or moderate-income housing which is financed or assisted by direct loan, tax abatement, or insurance under provisions of State or local law, similar to the aforementioned Federal programs, provided that, with respect to all such projects the owner is, by statute, regulation, or regulatory authority, limited as to the rate of return on his investment in the project, as to rentals or occupancy charges for units in the project, and in such other respects as would be a "limited dividend corporation" (as defined by the Secretary of Housing and Urban Development).

(d) Investments in other projects that may be considered to be designed primarily to promote community welfare include but are not limited to: (1) Projects for the construction or rehabilitation of housing for the benefit of

persons of low- or moderate-income, (2) projects for the construction or rehabilitation of ancillary local commercial facilities necessary to provide goods or services principally to persons residing in low- or moderate-income housing, and (3) projects designed explicitly to create improved job opportunities for low- or moderate-income groups (for example, minority equity investments, on a temporary basis, in small or medium-sized locally-controlled businesses in low-income urban or other economically depressed areas). In the case of de novo projects, the copy of the notice with respect to such other projects which is to be furnished to Reserve Banks in accordance with the provisions of § 225.23 should be accompanied by a memorandum which demonstrates that such projects meet the objectives of § 225.25(b)(6).

(e) Investments in corporations or projects organized to build or rehabilitate high-income housing, or commercial, office, or industrial facilities that are not designed explicitly to create improved job opportunities for low-income persons shall be presumed not to be designed primarily to promote community welfare, unless there is substantial evidence to the contrary, even though to some extent the investment may benefit the community.

(f) Section 6 of the Depository Institutions Disaster Relief Act of 1992 permits state member banks (12 U.S.C. 338a) and national banks (12 U.S.C. 24 (Eleventh)) to invest in the stock of community development corporations that are designed primarily to promote the public welfare of low- and moderate-income communities and persons in the areas of housing, services and employment. The Board and the Office of the Comptroller of the Currency have adopted rules that permit state member banks and national banks to make certain investments without prior approval. The Board believes that these rules are consistent with the Board's interpretation of, and decisions regarding, the scope of community welfare activities permissible for bank holding companies. Accordingly, approval received by a bank holding company to conduct activities designed to promote the community welfare under section 4(c)(8) of the Bank Holding

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Company Act (12 U.S.C. 1843(c)(8)) and § 225.25(b)(6) of the Board's Regulation Y (12 CFR 225.25(b)(6)) includes approval to engage, either directly or through a subsidiary, in the following activities, up to five percent of the bank holding company's total consolidated capital stock and surplus, without additional Board or Reserve Bank approval:

(1) Invest in and provide financing to a corporation or project or class of corporations or projects that the Board previously has determined is a public welfare project pursuant to paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a);

(2) Invest in and provide financing to a corporation or project that the Office of the Comptroller of the Currency previously has determined, by order or regulation, is a public welfare investment pursuant to section 5136 of the Revised Statutes (12 U.S.C. 24 (Eleventh));

(3) Invest in and provide financing to a community development financial institution pursuant to section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5));

(4) Invest in, provide financing to, develop, rehabilitate, manage, sell, and rent residential property if a majority of the units will be occupied by low- and moderate-income persons or if the property is a "qualified low-income building" as defined in section 42(c)(2) of the Internal Revenue Code (26 U.S.C. 42(c)(2));

(5) Invest in, provide financing to, develop, rehabilitate, manage, sell, and rent nonresidential real property or other assets located in a low- or moderate-income area provided the property is used primarily for low- and moderate-income persons;

(6) Invest in and provide financing to one or more small businesses located in a low- or moderate-income area to stimulate economic development;

(7) Invest in, provide financing to, develop, and otherwise assist job training or placement facilities or programs designed primarily for low- and moderate-income persons;

(8) Invest in and provide financing to an entity located in a low- or moderate-income area if that entity cre-

ates long-term employment opportunities, a majority of which (based on full time equivalent positions) will be held by low- and moderate-income persons; and

(9) Provide technical assistance, credit counseling, research, and program development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development.

(g) For purposes of paragraph (f) of this section, low- and moderate-income persons or areas means individuals and communities whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the U.S. Department of Housing and Urban Development. Small businesses are businesses that are smaller than the maximum size eligibility standards established by the Small Business Administration (SBA) for the Small Business Investment Company and Development Company Programs or the SBA section 7A loan program; and specifically include those businesses that are majority-owned by members of minority groups or by women.

(h) For purposes of paragraph (f) of this section, five percent of the total consolidated capital stock and surplus of a bank holding company includes its total investment in projects described in paragraph (f) of this section, when aggregated with similar types of investments made by depository institutions controlled by the bank holding company. The term total consolidated capital stock and surplus of the bank holding company means total equity capital and the allowance for loan and lease losses. For bank holding companies that file the FR Y-9C (Consolidated Financial Statements for Bank Holding Companies), these items are readily ascertained from Schedule HC—Consolidated Balance Sheet (total equity capital (line 27h) and allowance for loan and lease losses (line 4b)). For bank holding companies filing the FR Y-SP (Parent Company Only Financial Statements for Small Bank Holding Companies), an approximation of these items is ascertained from the Balance Sheet (total equity capital (line 16e)) and allowance for loan and lease losses

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(line 3b)) and from the Report of Condition for Insured Banks (Schedule RC—Balance Sheet (line 4b)).

[37 FR 11316, June 7, 1972; 37 FR 13336, July 7, 1972, as amended at Reg. Y, 59 FR 63713, Dec. 9, 1994]

### § 225.129 Activities closely related to banking.

*Courier activities.* The Board's amendment of § 225.4(a), which adds courier services to the list of closely related activities is intended to permit holding companies to transport time critical materials of limited intrinsic value of the types utilized by banks and bank-related firms in performing their business activities. Such transportation activities are of particular importance in the check clearing process of the banking system, but are also important to the performance of other activities, including the processing of financially-related economic data. The authority is not intended to permit holding companies to engage generally in the provision of transportation services.

During the course of the Board's proceedings pertaining to courier services, objections were made that courier activities were not a proper incident to banking because of the possibility that holding companies would or had engaged in unfair competitive practices. The Board believes that adherence to the following principles will eliminate or reduce to an insignificant degree any possibility of unfair competition:

a. A holding company courier subsidiary established under section 4(c)(8) should be a separate, independent corporate entity, not merely a servicing arm of a bank.

b. As such, the subsidiary should exist as a separate, profit-oriented operation and should not be subsidized by the holding company system.

c. Services performed should be explicitly priced, and shall not be paid for indirectly, for example, on the basis of deposits maintained at or loan arrangements with affiliated banks.

Accordingly, entry of holding companies into courier activities on the basis of section 4(c)(8) will be conditioned as follows:

1. *The courier subsidiary shall perform services on an explicit fee basis and shall be structured as an individual profit cen-*

*ter designed to be operated on a profitable basis.* The Board may regard operating losses sustained over an extended period as being inconsistent with continued authority to engage in courier activities.

2. *Courier services performed on behalf of an affiliate's customer (such as the carriage of incoming cash letters) shall be paid for by the customer. Such payments shall not be made indirectly, for example, on the basis of imputed earnings on deposits maintained at or of loan arrangements with subsidiaries of the holding company.* Concern has also been expressed that bank-affiliated courier services will be utilized to gain a competitive advantage over firms competing with other holding company affiliates. To reduce the possibility that courier affiliates might be so employed, the Board will impose the following third condition:

3. *The courier subsidiary shall, when requested by any bank or any data processing firm providing financially-related data processing services which firm competes with a banking or data processing subsidiary of Applicant, furnish comparable service at comparable rates, unless compliance with such request would be beyond the courier subsidiary's practical capacity. In this regard, the courier subsidiary should make known to the public its minimum rate schedule for services and its general pricing policies thereto. The courier subsidiary is also expected to maintain for a reasonable period of time (not less than two years) each request denied with the reasons for such denial.*

[38 FR 32126, Nov. 21, 1973, as amended at 40 FR 36309, Aug. 20, 1975]

### § 225.130 Issuance and sale of short-term debt obligations by bank holding companies.

For text of interpretation, see § 250.221 of this chapter.

[38 FR 35231, Dec. 26, 1973]

### § 225.131 Activities closely related to banking.

(a) *Bank management consulting advice.* The Board's amendment of § 225.4(a), which adds bank management consulting advice to the list of closely related activities, described in general terms the nature of such activity. This