

§ 225.118 Computer services for customers of subsidiary banks.

(a) The question has been presented to the Board of Governors whether a wholly-owned nonbanking subsidiary ("service company") of a bank holding company, which is now exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 ("the Act") because its sole business is the providing of services for the holding company and the latter's subsidiary banks, would lose its exempt status if it should provide data processing services for customers of the subsidiary banks.

(b) The Board understood from the facts presented that the service company owns a computer which it utilizes to furnish data processing services for the subsidiary banks of its parent holding company. Customers of these banks have requested that the banks provide for them computerized billing, accounting, and financial records maintenance services. The banks wish to utilize the computer services of the service company in providing these and other services of a similar nature. It is proposed that, in each instance where a subsidiary bank undertakes to provide such services, the bank will enter into a contract directly with the customer and then arrange to have the service company perform the services for it, the bank. In no case will the service company provide services for anyone other than its affiliated banks. Moreover, it will not hold itself out as, nor will its parent corporation or affiliated banks represent it to be, authorized or willing to provide services for others.

(c) Section 4(c)(1) of the Act permits a holding company to own shares in "any company engaged solely * * * in the business of furnishing services to or performing services for such holding company and banks with respect to which it is a bank holding company * * *." The Board has ruled heretofore that the term "services" as used in section 4(c)(1) is to be read as relating to those services (excluding "closely related" activities of "a financial, fiduciary, or insurance nature" within the meaning of section 4(c)(6)) which a bank itself can provide for its customers (§225.104). A determination as to whether a particular service may le-

gitimately be rendered or performed by a bank for its customers must be made in the light of applicable Federal or State statutory or regulatory provisions. In the case of a State-chartered bank, the laws of the State in which the bank operates, together with any interpretations thereunder rendered by appropriate bank authorities, would govern the right of the bank to provide a particular service. In the case of a national bank, a similar determination would require reference to provisions of Federal law relating to the establishment and operation of national banks, as well as to pertinent rulings or interpretations promulgated thereunder.

(d) Accordingly, on the assumption that all of the services to be performed are of the kinds that the holding company's subsidiary banks may render for their customers under applicable Federal or State law, the Board concluded that the rendition of such services by the service company for its affiliated banks would not adversely affect its exempt status under section 4(c)(1) of the Act.

(e) In arriving at the above conclusion, the Board emphasized that its views were premised explicitly upon the facts presented to it, and particularly its understanding that banks are permitted, under applicable Federal or State law to provide the proposed computer services. The Board emphasized also that in respect to the service company's operations, there continues in effect the requirement under section 4(c)(1) that the service company engage solely in the business of furnishing services to or performing services for the bank holding company and its subsidiary banks. The Board added that any substantial change in the facts that had been presented might require re-examination of the service company's status under section 4(c)(1).

[29 FR 12361, Aug. 28, 1964. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.121 Acquisition of Edge corporation affiliate by State member banks of registered bank holding company.

(a) The Board has been asked whether it is permissible for the commercial banking affiliates of a bank holding company registered under the Bank

Holding Company Act of 1956, as amended, to acquire and hold the shares of the holding company's Edge corporation subsidiary organized under section 25(a) of the Federal Reserve Act.

(b) Section 9 of the Bank Holding Company Act amendments of 1966 (Pub. L. 89-485, approved July 1, 1966) repealed section 6 of the Bank Holding Company Act of 1956. That rendered obsolete the Board's interpretation of section 6 that was published in the March 1966 Federal Reserve Bulletin, page 339 (§ 225.120). Thus, so far as Federal Banking law applicable to State member banks is concerned, the answer to the foregoing question depends on the provisions of section 23A of the Federal Reserve Act, as amended by the 1966 amendments to the Bank Holding Company Act. By its specific terms, the provisions of section 23A do not apply to an affiliate organized under section 25(a) of the Federal Reserve Act.

(c) Accordingly, the Board concludes that, except for such restrictions as may exist under applicable State law, it would be legally permissible by virtue of paragraph 20 of section 9 of the Federal Reserve Act for any or all of the State member banks that are affiliates of a registered bank holding company to acquire and hold shares of the Edge corporation subsidiary of the bank holding company within the amount limitation in the last sentence of paragraph 12 of section 25(a) of the Federal Reserve Act.

(12 U.S.C. 24, 248, 335, 371c, 611, 618)

[31 FR 10263, July 29, 1966. Redesignated at 36 FR 21666, Nov. 12, 1971]

§ 225.122 Bank holding company ownership of mortgage companies.

(a) The Board of Governors recently considered whether a bank holding company may acquire, either directly or through a subsidiary, the stock of a so-called "mortgage company" that would be operated on the following basis: The company would solicit mortgage loans on behalf of a bank in the holding company system, assemble credit information, make property inspections and appraisals, and secure title information. The company would also participate in the preparation of applications

for mortgage loans, which it would submit, together with recommendations with respect to action thereon, to the bank, which alone would decide whether to make any or all of the loans requested. The company would in addition solicit investors to purchase mortgage loans from the bank and would seek to have such investors contract with the bank for the servicing of such loans.

(b) Under section 4 of the Bank Holding Company Act (12 U.S.C. 1843), a bank holding company is generally prohibited from acquiring "direct or indirect ownership" of stock of nonbanking corporations. The two exceptions principally involved in the question presented are with respect to (1) stock that is eligible for investment by a national bank (section 4(c)(5) of the Act) and (2) shares of a company "furnishing services to or performing services for such bank holding company or its banking subsidiaries" (section 4(c)(1)(C) of the Act).

(c) The Board has previously indicated its view that a national bank is forbidden by the so-called "stock-purchase prohibition" of paragraph "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24) to purchase "for its own account * * * any shares of stock of any corporation" except (1) to the extent permitted by specific provisions of Federal law or (2) as comprised within the concept of "such incidental powers as shall be necessary to carry on the business of banking" referred to in the first sentence of said paragraph "Seventh". There is no specific statutory provision authorizing a national bank to purchase stock in a mortgage company, and in the Board's view such purchase may not properly be regarded as authorized under the "incidental powers" clause. (See 1966 Federal Reserve Bulletin 1151; 12 CFR 208.119.) Accordingly, a bank holding company may not acquire stock in a mortgage company on the basis of the section 4(c)(5) exemption.

(d) However, the Board does not believe that such conclusion prejudices consideration of the question whether such a company is within the section 4(c)(1)(C) "servicing exemption". The basic purpose of section 4 of the Act is to confine a bank holding company's