

indirectly, any equity securities in a client bank, this limitation does not apply to shares of a client bank acquired, directly or indirectly, as a result of a default on a debt previously contracted. This limitation is also inapplicable to shares of a client bank acquired by a bank holding company, directly or indirectly, in a fiduciary capacity: *Provided*, That the bank holding company or its subsidiary does not have sole discretionary authority to vote such shares or shares held with sole voting rights constitute not more than five percent of the outstanding voting shares of a client bank.

[39 FR 8318, Mar. 5, 1974; 39 FR 21120, June 19, 1974]

§ 225.132 Acquisition of assets.

(a) From time to time questions have arisen as to whether and under what circumstances a bank holding company engaged in nonbank activities, directly or indirectly through a subsidiary, pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1843(c)(3)), may acquire the assets and employees of another company, without first obtaining Board approval pursuant to section 4(c)(8) and the Board's Regulation Y (12 CFR 225.4(b)).

(b) In determining whether Board approval is required in connection with the acquisition of assets, it is necessary to determine (a) whether the acquisition is made in the ordinary course of business¹ or (b) whether it constitutes the acquisition, in whole or in part, of a going concern.²

(c) The following examples illustrate transactions where prior Board approval will generally be required:

(1) The transaction involves the acquisition of all or substantially all of the assets of a company, or a subsidi-

¹Section 225.4(c)(3) of the Board's Regulation Y (12 CFR 225.4(c)(3)) generally prohibits a bank holding company or its subsidiary engaged in activities pursuant to authority of section 4(c)(8) of the Act from being a party to any merger "or acquisition of assets other than in the ordinary course of business" without prior Board approval.

²In accordance with the provisions of section 4(c)(8) of the Act and § 225.4(b) of Regulation Y, the acquisition of a going concern requires prior Board approval.

ary, division, department or office thereof.

(2) The transaction involves the acquisition of less than "substantially all" of the assets of a company, or a subsidiary, division, department or office thereof, the operations of which are being terminated or substantially discontinued by the seller, but such asset acquisition is significant in relation to the size of the same line of nonbank activity of the holding company (e.g., consumer finance mortgage banking, data processing). For purposes of this interpretation, an acquisition would generally be presumed to be significant if the book value of the nonbank assets being acquired exceeds 50 percent of the book value of the nonbank assets of the holding company or nonbank subsidiary comprising the same line of activity.

(3) The transaction involves the acquisition of assets for resale and the sale of such assets is not a normal business activity of the acquiring holding company.

(4) The transaction involves the acquisition of the assets of a company, or a subsidiary, division, department or office thereof, and a major purpose of the transaction is to hire some of the seller's principal employees who are expert, skilled and experienced in the business of the company being acquired.

(d) In some cases it may be difficult, due to the wide variety of circumstances involving possible acquisition of assets, to determine whether such acquisitions require prior Board approval. Bank holding companies are encouraged to contact their local Reserve Bank for guidance where doubt exists as to whether such an acquisition is in the ordinary course of business or an acquisition, in whole or in part, of a going concern.

[39 FR 35128, Sept. 30, 1974, as amended at Reg. Y, 57 FR 28779, June 29, 1992]

§ 225.133 Computation of amount invested in foreign corporations under general consent procedures.

For text of this interpretation, see § 211.111 of this subchapter.

[40 FR 43199, Sept. 19, 1975]