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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket Nos. R-1078 and R-1094]

Bank Holding Companies and Change in Bank Control: Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and interim rule; technical amendments.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting technical amendments to the financial holding company provisions of Regulation Y to restore provisions that were adopted in December 2000, and inadvertently deleted from the Code of Federal Regulations.

DATES: The amendments are effective April 13, 2001.

FOR FURTHER INFORMATION CONTACT:

Kieran J. Fallon, Senior Counsel (202/452-5270), or Adrienne G. Threatt, Senior Attorney (202/452-3554), Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC, 20551.

SUPPLEMENTARY INFORMATION:

On December 19, 2000, the Board adopted a final rule permitting financial holding companies to act as a finder. (See 65 FR 80735, December 22, 2000, which added a new paragraph (d) to 12 CFR 225.86.) On December 27, 2000, the Board also adopted, on an interim basis and jointly with the Secretary of the Treasury, a rule that implemented the financial activity provisions of section 4(k)(5) of the Bank Holding Company Act (12 U.S.C. 1843(k)(5)). (See 66 FR 257, January 3, 2001, which added a new paragraph (e) to 12 CFR 225.86.) Due to delays in the publication of these rules in the **Federal Register** and the effective

dates of other rules adopted by the Board in late 2000 and early 2001, paragraphs (d) and (e) of section 225.86 were inadvertently deleted in the final publication of the Code of Federal Regulations (CFR). Accordingly, the Board has adopted these technical amendments to ensure the prior actions taken by the Board are included in the CFR. These amendments restore in final form 12 CFR 225.86(d) as adopted by the Board on December 19, 2000, and restore in interim form 12 CFR 225.86(e) as adopted by the Board on December 27, 2000. The Board will review comments received on the interim provisions of section 225.86(e) (Docket R-1094) in connection with its adoption of a final rule regarding the provisions of that paragraph.

The Board previously has reviewed the amendments under the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR Appendix A.1) and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See 65 FR 80735, December 22, 2000; 66 FR 257, January 3, 2001. In addition, the Board previously has solicited and considered public comments on section 225.86(d) of the rule under the Administrative Procedures Act (5 U.S.C. 553) (APA), and previously has determined under 5 U.S.C. 553(d)(3) of the APA that there is good cause to make the provisions of section 225.86(e) of the rule effective immediately and prior to the review of public comments.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set out in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1843(k), 1844(b), 1972(l), 2903, 3106, 3108, 3310, 3331-3351, 3907, and 3909.

2. Section 225.86 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 225.86 What activities are permissible for any financial holding company?

* * * * *

(d) *Activities determined to be financial in nature or incidental to financial activities by the Board*—(1) *Acting as a finder*—Acting as a finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate.

(i) *What is the scope of finder activities?* Acting as a finder includes providing any or all of the following services through any means—

(A) Identifying potential parties, making inquiries as to interest, introducing and referring potential parties to each other, and arranging contacts between and meetings of interested parties;

(B) Conveying between interested parties expressions of interest, bids, offers, orders and confirmations relating to a transaction; and

(C) Transmitting information concerning products and services to potential parties in connection with the activities described in paragraphs (d)(1)(i)(A) and (B) of this section.

(ii) *What are some examples of finder services?* The following are examples of the services that may be provided by a finder when done in accordance with paragraphs (d)(1)(iii) and (iv) of this section. These examples are not exclusive.

(A) Hosting an electronic marketplace on the financial holding company's Internet web site by providing hypertext or similar links to the web sites of third party buyers or sellers.

(B) Hosting on the financial holding company's servers the Internet web site of—

(1) A buyer (or seller) that provides information concerning the buyer (or seller) and the products or services it seeks to buy (or sell) and allows sellers (or buyers) to submit expressions of interest, bids, offers, orders and confirmations relating to such products or services; or

(2) A government or government agency that provides information concerning the services or benefits made available by the government or government agency, assists persons in completing applications to receive such services or benefits from the government or agency, and allows persons to transmit their applications for services or benefits to the government or agency.

(C) Operating an Internet web site that allows multiple buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counterparties for transactions, aggregate orders for goods or services with those made by other parties, and enter into transactions between themselves.

(D) Operating a telephone call center that provides permissible finder services.

(iii) *What limitations are applicable to a financial holding company acting as a finder?*

(A) A finder may act only as an intermediary between a buyer and a seller.

(B) A finder may not bind any buyer or seller to the terms of a specific transaction or negotiate the terms of a specific transaction on behalf of a buyer or seller, except that a finder may—

(1) Arrange for buyers to receive preferred terms from sellers so long as the terms are not negotiated as part of any individual transaction, are provided generally to customers or broad categories of customers, and are made available by the seller (and not by the financial holding company); and

(2) Establish rules of general applicability governing the use and operation of the finder service, including rules that—

(i) Govern the submission of bids and offers by buyers and sellers that use the finder service and the circumstances under which the finder service will match bids and offers submitted by buyers and sellers; and

(ii) Govern the manner in which buyers and sellers may bind themselves to the terms of a specific transaction.

(C) A finder may not—

(1) Take title to or acquire or hold an ownership interest in any product or service offered or sold through the finder service;

(2) Provide distribution services for physical products or services offered or sold through the finder service;

(3) Own or operate any real or personal property that is used for the purpose of manufacturing, storing, transporting, or assembling physical products offered or sold by third parties; or

(4) Own or operate any real or personal property that serves as a physical location for the physical purchase, sale or distribution of products or services offered or sold by third parties.

(D) A finder may not engage in any activity that would require the company to register or obtain a license as a real

estate agent or broker under applicable law.

(iv) *What disclosures are required?* A finder must distinguish the products and services offered by the financial holding company from those offered by a third party through the finder service.

(2) [Reserved]

(e) *Activities permitted under section 4(k)(5) of the Bank Holding Company Act (12 U.S.C. 1843(k)(5)).*

(1) The following types of activities are financial in nature or incidental to a financial activity when conducted pursuant to a determination by the Board under paragraph (e)(2) of this section:

(i) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;

(ii) Providing any device or other instrumentality for transferring money or other financial assets; and

(iii) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(2) *Review of specific activities.*

(i) *Is a specific request required?* A financial holding company that wishes to engage on the basis of paragraph (e)(1) of this section in an activity that is not otherwise permissible for a financial holding company must obtain a determination from the Board that the activity is permitted under paragraph (e)(1).

(ii) *Consultation with the Secretary of the Treasury.* After receiving a request under this section, the Board will provide the Secretary of the Treasury with a copy of the request and consult with the Secretary in accordance with section 4(k)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1843(k)(2)(A)).

(iii) *Board action on requests.* After consultation with the Secretary, the Board will promptly make a written determination regarding whether the specific activity described in the request is included in an activity category listed in paragraph (e)(1) of this section and is therefore either financial in nature or incidental to a financial activity.

(3) *What factors will the Board consider?* In evaluating a request made under this section, the Board will take into account the factors listed in section 4(k)(3) of the BHC Act (12 U.S.C. 1843(k)(3)) that it must consider when determining whether an activity is financial in nature or incidental to a financial activity.

(4) *What information must the request contain?* Any request by a financial holding company under this section must be in writing and must:

(i) Identify and define the activity for which the determination is sought,

specifically describing what the activity would involve and how the activity would be conducted; and

(ii) Provide information supporting the requested determination, including information regarding how the proposed activity falls into one of the categories listed in paragraph (e)(1) of this section, and any other information required by the Board concerning the proposed activity.

By order of the Board of Governors of the Federal Reserve System, April 9, 2001.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 01-9123 Filed 4-12-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-AEA-15FR]

Establishment Class E Airspace: Seneca Falls, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Seneca Falls, NY. An Area Navigation (RNAV) Standard Instrument Approach Procedure has been developed for the Finger Lakes Regional Airport (OG7). Controlled airspace extending upward from 700 feet to 1200 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Finger Lakes Regional Airport.

EFFECTIVE DATE: 0901 UTC May 17, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA-520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434-4809, telephone: (718) 553-4521.

SUPPLEMENTARY INFORMATION:

History

On January 17, 2001 a document proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace extending upward from 700 feet to 1200 feet Above Ground Level (AGL) for an RNAV approach to the Finger Lakes Regional Airport, Seneca Falls, NY, was published in the **Federal Register** (66 FR 3886-3887). Interested parties were invited to participate in this rulemaking