

FEDERAL RESERVE SYSTEM
12 CFR Parts 225 and 238
Regulations Y and LL; Docket No. R-1662
RIN 7100-AF 49
Control and Divestiture Proceedings

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule, delay of effective date.

SUMMARY: The Board is delaying the effective date of its final rule that revises the Board's framework for determining whether a company controls another company for purposes of the Bank Holding Company Act or the Home Owners' Loan Act, as published on March 2, 2020 at 85 FR 12398.

DATES: Effective [INSERT DATE OF FILING], the effective date for the final rule published March 2, 2020, at 85 FR 12398 is delayed until September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Mark Buresh, Senior Counsel, (202) 452-5270, Greg Frischmann, Senior Counsel, (202) 452-2803, and Brian Phillips, (202) 452-3221, Senior Attorney, Legal Division, Board of Governors of Federal Reserve System, 20th and C Streets, Washington D.C. 20551. You may also contact any person listed in the final rule document published in 85 FR 12398, March 2, 2020. For users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Final Rule and Delay of Effective Date

On January 30, 2020, the Board adopted a final rule to revise the Board's regulations related to determinations of whether a company controls another company for purposes of the Bank Holding Company Act or the Home Owners' Loan Act (see 85 FR 12398, March 2, 2020). The control final rule was originally to become effective April 1, 2020.

The Board recognizes that, as a result of COVID-19, there have been recent dislocations in the U.S. economy. Many companies, including regulated financial institutions, have also expressed a desire to consult with Board staff about the effect of the new control rule on various existing investments and relationships. For these reasons, the Board is delaying the effective date of the control final rule by two quarters, which should provide companies affected by the new control rule additional time to analyze the impact of the rule on existing investments and relationships, and to consult with Board staff as necessary about such matters.

II. Administrative Law Matters

A. Administrative Procedure Act

The Board is issuing the final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).¹ Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”²

The Board believes that the public interest is best served by having the final rule become effective immediately upon publication in the Federal Register. As a result of this rule, the changes approved by the Board on January 30, 2020 to Parts 225 and 238 of the Board’s regulations on control and divestiture proceedings will not be reflected in the Code of Federal Regulations until September 30, 2020. The spread of COVID-19 has disrupted economic

¹ 5 U.S.C. 553.

² 5 U.S.C. 553(b)(3)(B)

activity in the United States. In addition, U.S. financial markets have featured significant levels of volatility. In approving changes to Parts 225 and 238 of the Board’s regulations, the Board noted that companies may need to consult with Board staff about prior investments and relationships that have not been previously reviewed by the Board. Delaying the changes to Parts 225 and 238 of the Board’s regulations will allow companies additional time to consult with Board staff about existing investments and relationships, allowing companies greater flexibility to focus on COVID-19-related issues. For these reasons, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.³

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.⁴ As noted above, the Board finds that there is good cause to delay the effective date of the previously approved changes to Parts 225 and 238 of the Board’s regulations, for the reasons noted above.⁵

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule.⁶ If a rule is deemed a “major rule” by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.⁷

³ 5 U.S.C. 553(b)(3)(B); 553(d)(3).

⁴ 5 U.S.C. 553(d).

⁵ *Id.*

⁶ 5 U.S.C. 801 *et seq.*

⁷ 5 U.S.C. 801(a)(3).

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.⁸

For the same reasons set forth above, the Board is adopting the final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.⁹ In light of current market uncertainty, the Board believes that delaying the effective date of the rule would be contrary to the public interest.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA), an agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control

⁸ 5 U.S.C. 804(2).

⁹ 5 U.S.C. 808.

number. The Board has reviewed this final rule pursuant to authority delegated by the OMB and has determined that it does not contain any collections of information pursuant to the PRA.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)¹⁰ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.¹¹ The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

E. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act¹² requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the final rule in a simple and straightforward manner. The Board invites comments on whether there are additional steps it could take to make the rule easier to understand.

By order of the Board of Governors of the Federal Reserve System, March 31, 2020.

**Ann Misback,
Secretary of the Board.**

¹⁰ 5 U.S.C. 601 et seq.

¹¹ Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$600 million or less and trust companies with total assets of \$41.5 million or less. See 13 CFR 121.201.

¹² 12 U.S.C. 4809.