

of checks are subject to delayed disbursement, the effects of delayed disbursement are particularly significant in the case of teller's checks and cashier's checks.² In addition to increased transportation costs, the delayed disbursement of teller's checks and cashier's checks imposes float costs on the depository bank, which must generally make the proceeds of these checks available for withdrawal on the business day following deposit.

The Expedited Funds Availability Act and Regulation CC require a depository bank to provide customers with next-day availability, under specified conditions, for certain checks deposited in transaction accounts, including cashier's checks and teller's checks. Depending on the location of the paying bank, a depository bank may not receive credit for the check by the time funds must be made available to the customer for withdrawal. Thus, the practice of delayed disbursement permits a bank issuing such checks to impose costs, in terms of lost interest, on other banks and to benefit from interest or earnings credits earned on outstanding checks until the checks are presented for payment.

The Board recognizes that many banks that issue teller's checks benefit from the specialization and economies of scale of certain banks and other service providers that can perform the tracking, reconciliation, and payment services associated with teller's checks at a lower cost than the issuing bank would incur by issuing and paying cashier's checks. In addressing the delayed disbursement problem, the Board believes that it is desirable to reduce the float created by the issuance of these checks while minimizing the disruption of efficient teller's check services.

As a general matter, the Board believes that a depository bank located in the same community as the bank that issues a teller's check should be able to receive next-day credit for the teller's check. The Board has determined, after review of Federal Reserve collection patterns and deposit deadlines across the country, that depository banks in most areas generally can receive next-day credit for checks that are encoded with a nonlocal city routing number³ and presented in a nonlocal Federal Reserve city. For checks that are encoded with a nonlocal RCPC or country routing number and

presented in a nonlocal check processing region, credit is generally deferred by one or two days. The Board recognizes, however, that depository banks located on the west coast generally may not be able to receive next-day availability for checks presented in most nonlocal cities. In addition, in other isolated areas of the country, next-day credit is generally not available for any check payable by a nonlocal paying bank. The Board recognizes that banks in these areas may benefit by having access to a centralized teller's check service provider.

The Board believes that banks issuing teller's checks and teller's check service providers should take steps to ensure that delays in the collection and return of teller's checks are kept to a minimum. First, the Board believes that any disbursement practice designed to extend the time needed to collect a teller's check is inappropriate. Although the Board believes that centralized disbursement is economically efficient in some cases, the location of the paying bank should be chosen so as to minimize collection time.

Second, the Board has determined that depository banks can generally receive credit faster for checks payable by a bank with a city routing number than for checks payable by a bank with an RCPC or country routing number. The Board believes that teller's check service providers that serve issuing banks in check processing regions that are nonlocal to the paying bank should help speed the collection and return of teller's checks by use of a city presentment point and a city routing number in the MICR line of its teller's checks.

Some teller's check service providers confine the scope of their services to a state or other limited geographic area. Because the state or area may be divided into more than one check processing region, such service providers may use a paying bank that is nonlocal to many of their customer banks. In addition, the state or area may contain no Federal Reserve city. The Board recognizes that it may be impractical for such service providers to use a city presentment point.

Third, the Board believes that those teller's check service providers that serve banks nationwide should accept teller's checks at more than one presentment point, particularly those providers that serve west coast banks. For example, a teller's check service provider that uses an east coast paying bank could shorten collection and return times for its California customers by also providing a west coast presentment point for teller's checks.

The Board recognizes that similar delayed disbursement problems arise in connection with cashier's checks, issued by a bank with multistate branches, that depository banks must send to a central location for payment. The Board believes that the same general guidelines should apply to the disbursement of cashier's checks as apply to teller's checks and will take further action regarding cashier's checks should abusive delayed disbursement practices occur.

The Board will monitor the industry's adherence to the policy statement and delayed disbursement practices in general and, should abuses continue, will consider appropriate further action.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 20, 1999.

Jennifer J. Johnson,
Secretary of the Board.

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FEDERAL TRADE COMMISSION

Premerger Notification: Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of the issuance of Formal Interpretation 16 changing the policy of the Premerger Notification office to require filing persons to submit only one original affidavit and certification with their filings.

SUMMARY: The Premerger Notification Office ("PNO") of the Federal Trade Commission ("FTC"), with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("DOJ," collectively, "the enforcement agencies"), is issuing Formal Interpretation 16 addressing the number of original affidavits and certification pages which must accompany Premerger Notification filings. Section 803.5 of the Premerger Notification rules ("the rules") requires all acquiring persons in transactions falling under § 801.30 and all parties to non-§ 801.30 transactions to submit certain affidavits with their premerger notification filings. Section 803.6 of the rules requires a notarized certification for such filings. The PNO has required that each copy of the form be submitted with an original affidavit and certification. Pursuant to Formal Interpretation 16, from now on the PNO will require that one original affidavit and one original certification page accompany one of the two copies of the form submitted to the FTC. The other affidavits and certification pages may be duplicates. Only the originals need be separately notarized.

DATES: Formal Interpretation 16 is effective on September 24, 1999.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-2846, Thomas F. Hancock, Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326-2946.

² A "teller's check" is a check provided to a customer of a bank, or acquired from a bank for remittance purposes, that is drawn by the bank and drawn on another bank or payable through or at another bank. For the purposes of this policy statement, "teller's check" includes checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank. A "cashier's check" is a check provided to a customer of a bank, or acquired from a bank for remittance purposes, that is drawn on the bank, is signed by an officer or employee of the bank on behalf of the bank as drawer, and is a direct obligation of the bank.

³ These checks are payable by banks located in the same city as a Federal Reserve office. RCPC ("Regional Check Processing Center") checks are payable by banks outside Federal Reserve cities. Certain Federal Reserve regions also contain country zones, which are generally more remote from Federal Reserve cities than are RCPC zones.

SUPPLEMENTARY INFORMATION: The text of Formal Interpretation Number 16 is set out below:

Formal Interpretation Number 16

Formal Interpretation Pursuant to § 803.30 of the Premerger Notification Rules, 16 CFR § 803.30, Concerning the Number of Original Affidavits and Certification Pages Which Must Accompany a Premerger Notification Filing.

This is a Formal Interpretation pursuant to § 803.30 of the Premerger Notification Rules ("the rules"). The rules implement section 7A of the Clayton Act, 15 U.S.C. 18a, which was added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the act"). The act requires the parties to certain acquisitions of voting securities or assets to notify the FTC and the DOJ and to wait a specified period of time before consummating the transaction. The purpose of the act and the rules is to ensure that such transactions receive meaningful scrutiny under the antitrust laws, with the possibility of an effective remedy for violations, before consummation.

The act states that "no person shall acquire * * * any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section * * *." Section 803.1(a) of the rules states that the notification required by the act is the completed Antitrust Improvements Act Notification and Report For Certain Mergers and Acquisitions ("the form"), 16 CFR part 803—Appendix.

Section 803.5(a) of the rules requires that "* * * (f)or acquisitions to which § 801.30 applies, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, attesting (that the acquired person has been notified of certain facts about the proposed transaction, that the reporting person has a good faith intention to make the acquisition, and, in the case of a tender offer, that the intention to make a tender offer has been publicly announced)." Section 803.5(b) requires that "* * * (f)or acquisitions to which Section 801.30 does not apply, the notification required by the act shall contain an affidavit * * * attesting that a contract, agreement in principal or letter of intent to merge or acquire has been executed, and * * * to the good faith intention of the person filing notification to complete the transaction." Section 803.6(a) of the rules states that "The notification

required by the act shall be certified * * *."

One of the primary purposes of these requirements—particularly that of certification—is to preserve the evidentiary value of the filing. The Statement of Basis and Purpose ("SBP") for § 803.6 states that "* * * the certification is intended to estop the person on whose behalf the report is filed from later denying the completeness or accuracy of the information provided on the form in the event that either enforcement agency seeks to introduce any such information into evidence in any proceeding." 43 FR 33511 (July 31, 1978). The certification requirement is also intended to place responsibility on an individual to ensure that information reported is true, correct, and complete and that the form is filled out in accordance with the act and the rules. *Id.*

The affidavit requirement is intended to ensure that several important prerequisites are met before the review process begins. Thus the acquiring person must attest that it has made certain disclosures about the proposed transaction to the acquired person so the acquired person has knowledge of its obligation to file. *Id.* at 33510. In consensual transactions, the parties must also attest that a contract, letter of intent, or agreement in principal has been executed. *Id.* Its contents also ensure that the parties intend to consummate the acquisition and are not using the notification process to vet a purely hypothetical transaction with the agencies. *Id.* at 33511.

The Instructions to the form state that each person filing notification must "(c)omplete and return two notarized copies (with one set of documentary attachments) of (the form) to (the PNO) * * * and three notarized copies (with two sets of documentary attachments) to (the DOJ) * * *." The PNO has interpreted the instructions to require that each certification be originally signed and notarized and that each of the required affidavits also be originally signed and notarized. This has resulted in each party's submission to the enforcement agencies in a non-§ 801.30 transaction and acquiring persons' filings in non-§ 801.30 transactions having ten original signatures and ten original notarizations (five on the affidavits and five on the certifications). Acquired persons' filings in § 801.30 transactions must have five originally signed and notarized certifications.

The PNO has determined that multiple original signatures and notarizations, while not a great burden, is not a negligible one. Accordingly, the PNO has decided to modify its position

on the necessity for original signatures and notarizations with premerger notification filings. From now on, filing persons need supply only one original signed and notarized affidavit (if required) and one original signed and notarized certification with one of the two copies of the form submitted to the FTC. The affidavits and certifications accompanying the other copies of the form may be copies of these originals. A copy is acceptable if the signature and notarization (including the embossed notary seal, if required in the jurisdiction of notarization) are clearly visible. Likewise, a person required to re-certify an amended filing because the original was deficient may submit one original certification and four copies with the new information.

This Formal Interpretation affects only the number of original signatures and notarizations which must accompany premerger notification filings. It does not change the affidavit or certification requirements themselves, who may sign the affidavit and certification, or the number of copies of the form and documentary attachments which must be provided. It also remains the case that any filing person, United States of foreign, can swear or affirm under penalty of perjury under the laws of the United States pursuant to 28 U.S.C. 1746 in lieu of notarization.

Donald S. Clark,

Secretary.

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GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, October 18, 1999, from 8:30 a.m. to 4:30 p.m. and Tuesday, October 19, 1999, from 8:30 a.m. to 11:30 a.m., in room 7C13 of the General Accounting Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT:
Marcia Buchanan, Assistant Director,