

company is any person who participates or has the authority to participate (other than in the capacity as a director) in major policymaking functions of the company, whether or not the officer has an official title, the title designates the officer as an assistant, or the officer serves without salary or other compensation.

(2) The term “executive officer” does not include—

(i) Any person, including a person with an official title, who may exercise a certain measure of discretion in the performance of his duties, including the discretion to make decisions in the ordinary course of the company’s business, but who does not participate in the determination of major policies of the company and whose decisions are limited by policy standards fixed by senior management of the company; or

(ii) Any person who is excluded from participating (other than in the capacity of a director) in major policymaking functions of the company by resolution of the board of directors or by the bylaws of the company and who does not in fact participate in such policymaking functions.

(e) *What is the Board?* The Board means the Board of Governors of the Federal Reserve System.

(f) *How are other terms that are used in this part defined?* Unless otherwise defined in this part, all terms used have the meanings given such terms in the Board’s Regulation Y (12 CFR Part 225).

## PART 1501—FINANCIAL SUBSIDIARIES

Sec.

1501.1 How do you request the Secretary to determine that an activity is financial in nature or incidental to a financial activity?

1501.2 What activities has the Secretary determined to be financial in nature or incidental to a financial activity?

1501.3 Comparable ratings requirement for national banks among the second 50 largest insured banks.

AUTHORITY: Section 5136A of the Revised Statutes of the United States (12 U.S.C. 24a).

SOURCE: 65 FR 14821, Mar. 20, 2000, unless otherwise noted.

### § 1501.1 How do you request the Secretary to determine that an activity is financial in nature or incidental to a financial activity?

(a) *Requests regarding activities that may be financial in nature or incidental to a financial activity.* A national bank or other interested party may request the Secretary to determine that an activity not defined to be financial in nature or incidental to a financial activity in Section 4(k)(4) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)), is financial in nature or incidental to a financial activity.

(b) *What information must the request contain?* A request submitted under this section must be in writing and must:

(1) 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;

(2) Explain in detail why the activity should be considered financial in nature or incidental to a financial activity; and

(3) Provide information supporting the requested determination and any other information required by the Secretary concerning the proposed activity.

(c) *What factors will the Secretary take into account in making his determination?*

(1) Section 121 of the Gramm-Leach-Bliley Act (GLBA) (Public Law 106–102, 113 Stat. 1373) requires the Secretary to take into account the following factors in making his determination:

(i) The purposes of section 5136A of the Revised Statutes (12 U.S.C. 24a) and the GLBA;

(ii) Changes or reasonably expected changes in the marketplace in which banks compete;

(iii) Changes or reasonably expected changes in the technology for delivering financial services; and

(iv) Whether the activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to—

(A) Compete effectively with any company seeking to provide financial services in the United States;

(B) Efficiently deliver information and services that are financial in nature through the use of technological

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means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

(C) Offer customers any available or emerging technological means for using financial services or for the document imaging of data.

(2) Because the Secretary is required to consider the factors in paragraph (c)(1) of this section in making his determination, any request should address the factors in paragraph (c)(1) of this section. The Secretary may also consider other relevant factors.

(d) *What action will the Secretary take after receiving a request?*—(1) *Consultation with the Board of Governors of the Federal Reserve System (Board).* Upon receiving the request, the Secretary will send a copy to the Board and consult with the Board in accordance with section 5136A(b)(1)(B)(i) of the Revised Statutes (12 U.S.C. 5136A(b)(1)(B)(i)).

(2) *Public notice.* The Secretary may, as appropriate and after consultation with the Board, publish a description of the proposal in the FEDERAL REGISTER with a request for public comment.

(e) *How and when will the Secretary act on a request?* In the case of each request, the Secretary:

(1) Will inform the requester of the Secretary's final determination regarding the requested activity; and

(2) Will endeavor to inform the requester of the Secretary's final determination within 60 days of completion of both the consultative process described in paragraph (d)(1) of this section and the public comment period, if any.

(f) *What must a national bank do in order for a financial subsidiary to engage in activities that the Secretary has determined are financial in nature or incidental to financial activities?* Once the Secretary determines that an activity is financial in nature or incidental to a financial activity (either in accordance with this section or after evaluation of a proposal raised by the Board under section 5136A(b)(1)(B)(ii) of the Revised Statutes), a financial subsidiary may engage in the activity subject to the requirements of 12 CFR part 5 and in accordance with any terms or conditions established by the Secretary in

connection with authorizing the activity.

### **§ 1501.2 What activities has the Secretary determined to be financial in nature or incidental to a financial activity?**

(a) *Activities permitted under section 5136A(b)(3) of the Revised Statutes (12 U.S.C. 24a(b)(3)).* (1) The following types of activities are financial in nature or incidental to a financial activity when conducted pursuant to a determination by the Secretary under paragraph (a)(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 subsidiary that wishes to engage on the basis of paragraph (a)(1) of this section in an activity that is not otherwise permissible for a financial subsidiary must obtain a determination from the Secretary that the activity is permitted under paragraph (a)(1).

(ii) *Consultation with the Board of Governors of the Federal Reserve System.* After receiving a request under this section, the Secretary will provide the Board of Governors of the Federal Reserve System (Board) with a copy of the request and consult with the Board in accordance with section 5136A(b)(1)(B)(i) of the Revised Statutes (12 U.S.C. 24a(b)(1)(B)(i)).

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

(3) *What factors will the Secretary consider?* In evaluating a request made under this section, the Secretary will take into account the factors listed in

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section 5136A(b)(2) of the Revised Statutes (12 U.S.C. 24a(b)(2)) that the Secretary 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 financial subsidiary 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 (a)(1) of this section, and any other information required by the Secretary concerning the proposed activity.

(b) [Reserved]

[66 FR 260, Jan. 3, 2001]

**§ 1501.3 Comparable ratings requirement for national banks among the second 50 largest insured banks.**

(a) *Scope and purpose.* Section 5136A of the Revised Statutes permits a national bank that is within the second 50 largest insured banks to own or control a financial subsidiary only if, among other requirements, the bank satisfies the eligible debt requirement set forth in section 5136A or an alter-

native criteria jointly established by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. This section establishes the alternative criteria that a national bank among the second 50 largest insured banks may meet, which criteria is comparable to and consistent with the purposes of the eligible debt requirement established by section 5136A.

(b) *Alternative criteria.* A national bank satisfies the alternative criteria referenced in Section 5136A(a)(2)(E) of the Revised Statutes (12 U.S.C. 24a) and 12 CFR 5.39(g)(3) if the bank has a current long-term issuer credit rating from at least one nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.

(c) *Definition of long-term issuer credit rating.* A “long-term issuer credit rating” is a written opinion issued by a nationally recognized statistical rating organization of the bank’s overall capacity and willingness to pay on a timely basis its unsecured, dollar-denominated financial obligations maturing in not less than one year.

[66 FR 8750, Feb. 2, 2001]

**PARTS 1502–1503 [RESERVED]**

**PARTS 1505–1507 [RESERVED]**