

FDIC. The outreach program is incorporated into FDIC policies and guidelines governing contracting and the retention of legal services.

§361.5 What are the FDIC's oversight and monitoring responsibilities in administering this program?

(a) The FDIC Office of Diversity and Economic Opportunity (ODEO) has overall responsibility for nationwide outreach oversight, which includes, but is not limited to, the monitoring, review and interpretation of relevant regulations. In addition, the ODEO is responsible for providing the FDIC with technical assistance and guidance to facilitate the identification, registration, and solicitation of MWOBs.

(b) Each FDIC office that performs contracting or outreach activities will submit information to the ODEO on a quarterly basis, or upon request. Quarterly submissions will include, at a minimum, statistical information on contract awards and solicitations by designated demographic categories.

§361.6 What outreach efforts are included in this program?

(a) Each office engaged in contracting with the private sector will designate one or more MWOP coordinators. The coordinators will perform outreach activities for MWOP and act as liaison between the FDIC and the public on MWOP issues. On a quarterly basis, or as requested by the ODEO, the coordinators will report to the ODEO on their implementation of the outreach program.

(b) Outreach includes the identification and registration of MWOBs who can provide goods and services utilized by the FDIC. This includes distributing information concerning the MWOP.

(c) The identification of MWOBs for the provision of legal and non-legal services will primarily be accomplished by:

(1) Obtaining various lists and directories of MWOBs maintained by other federal, state, and local governmental agencies;

(2) Participating in conventions, seminars and professional meetings comprised of, or attended predominately by, MWOBs;

(3) Conducting seminars, meetings, workshops and other various functions to promote the identification and registration of MWOBs;

(4) Placing MWOP promotional advertisements indicating opportunities with the FDIC in minority- and women-owned media; and

(5) Monitoring to assure that FDIC staff interfacing with the contracting community are knowledgeable of, and actively promoting, the MWOP.

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

Subpart A—Activities of Insured State Banks

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326.18 Restrictions on financial subsidiary activities of insured state nonmember bank subsidiaries.

AUTHORITY: 12 U.S.C. 1816, 1818, 1819(a) (Tenth), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(1).

SOURCE: 63 FR 66326, Dec. 1, 1998, unless otherwise noted.

Subpart A—Activities of Insured State Banks

§ 362.1 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter, implements the provisions of section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a) that restrict and prohibit insured State banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries. The phrase “activity permissible for a national bank” means any activity authorized for national banks under any statute including the National Bank Act (12 U.S.C. 21 *et seq.*), as well as activities recognized as permissible for a national bank in regulations, official circulars, bulletins, orders or written interpretations issued by the Office of the Comptroller of the Currency (OCC).

(b) This subpart does not cover the following activities:

(1) Activities conducted other than “as principal,” defined for purposes of this subpart as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services;

(2) Interests in real estate in which the real property is used or intended in good faith to be used within a reasonable time by an insured State bank or its subsidiaries as offices or related facilities for the conduct of its business or future expansion of its business or used as public welfare investments of a

type permissible for national banks; and

(3) Equity investments acquired in connection with debts previously contracted (DPC) if the insured State bank does not hold the property for speculation and takes only such actions as would be permissible for a national bank’s DPC. The bank must dispose of the property within the shorter of the period set by Federal law for national banks or the period allowed under State law. For real estate, national banks may not hold DPC for more than 10 years. For equity securities, national banks must generally divest DPC as soon as possible consistent with obtaining a reasonable return.

(c) A subsidiary of an insured State bank may not engage in real estate investment activities that are not permissible for a subsidiary of a national bank unless the bank does so through a subsidiary of which the bank is a majority owner, is in compliance with applicable capital standards, and the FDIC has determined that the activity poses no significant risk to the appropriate deposit insurance fund. This subpart provides standards for majority-owned subsidiaries of insured State banks engaging in real estate investment activities that are not permissible for a subsidiary of a national bank. Because of safety and soundness concerns relating to real estate investment activities, subpart B of this part reflects special rules for subsidiaries of insured State nonmember banks that engage in real estate investment activities of a type that are not permissible for a national bank, but may be otherwise permissible for a subsidiary of a national bank.

(d) The FDIC intends to allow insured State banks and their subsidiaries to undertake only safe and sound activities and investments that do not present significant risks to the deposit insurance funds and that are consistent with the purposes of Federal deposit insurance and other applicable law. This subpart does not authorize any insured State bank to make investments or to conduct activities that are not authorized or that are prohibited by either State or Federal law.

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§ 362.2 Definitions.

For the purposes of this subpart, the following definitions will apply:

(a) *Bank, State bank, savings association, State savings association, depository institution, insured depository institution, insured State bank, Federal savings association, and insured State nonmember bank* shall each have the same respective meaning contained in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(b) *Activity* means the conduct of business by a state-chartered depository institution, including acquiring or retaining an equity investment or other investment.

(c) *Change in control* means any transaction:

(1) By a State bank or its holding company for which a notice is required to be filed with the FDIC, or the Board of Governors of the Federal Reserve System (FRB), pursuant to section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) except a transaction that is presumed to be an acquisition of control under the FDIC's or FRB's regulations implementing section 7(j);

(2) As a result of which a State bank eligible for the exception described in §362.3(a)(2)(iii) is acquired by or merged into a depository institution that is not eligible for the exception, or as a result of which its holding company is acquired by or merged into a holding company which controls one or more bank subsidiaries not eligible for the exception; or

(3) In which control of the State bank is acquired by a bank holding company in a transaction requiring FRB approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842), other than a one bank holding company formation in which all or substantially all of the shares of the holding company will be owned by persons who were shareholders of the bank.

(d) *Company* means any corporation, partnership, limited liability company, business trust, association, joint venture, pool, syndicate or other similar business organization.

(e) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting securities of a company, the ability to control in any manner the election of a

majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(f) *Convert its charter* means an insured State bank undergoes any transaction that causes the bank to operate under a different form of charter than it had as of December 19, 1991, except a change from mutual to stock form shall not be considered a charter conversion.

(g) *Equity investment* means an ownership interest in any company; any membership interest that includes a voting right in any company; any interest in real estate; any transaction which in substance falls into any of these categories even though it may be structured as some other form of business transaction; and includes an equity security. The term "equity investment" does not include any of the foregoing if the interest is taken as security for a loan.

(h) *Equity security* means any stock (other than adjustable rate preferred stock, money market (auction rate) preferred stock, or other newly developed instrument determined by the FDIC to have the character of debt securities), certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing.

(i) *Extension of credit, executive officer, director, principal shareholder, and related interest* each has the same respective meaning as is applicable for the purposes of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) and §337.3 of this chapter.

(j) *Institution* shall have the same meaning as "state-chartered depository institution."

(k) *Majority-owned subsidiary* means any corporation in which the parent insured State bank owns a majority of the outstanding voting stock.

(l) *National securities exchange* means a securities exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) and the National Market System, i.e., the top tier of the National Association of Securities Dealers Automated Quotation System.

(m) *Real estate investment activity* means any interest in real estate (other than as security for a loan) held directly or indirectly that is not permissible for a national bank.

(n) *Residents of the state* includes individuals living in the State, individuals employed in the State, any person to whom the company provided insurance as principal without interruption since such person resided in or was employed in the State, and companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State.

(o) *Security* has the same meaning as it has in part 344 of this chapter.

(p) *Significant risk to the deposit insurance fund* shall be understood to be present whenever the FDIC determines there is a high probability that any insurance fund administered by the FDIC may suffer a loss. Such risk may be present either when an activity contributes or may contribute to the decline in condition of a particular state-chartered depository institution or when a type of activity is found by the FDIC to contribute or potentially contribute to the deterioration of the overall condition of the banking system.

(q) *State-chartered depository institution* means any State bank or State savings association insured by the FDIC.

(r) *Subsidiary* means any company controlled by an insured depository institution.

(s) *Tier one capital* has the same meaning as set forth in part 325 of this chapter for an insured State non-member bank. For other state-chartered depository institutions, the term “tier one capital” has the same mean-

ing as set forth in the capital regulations adopted by the appropriate Federal banking agency.

(t) *Well-capitalized* has the same meaning set forth in part 325 of this chapter for an insured State non-member bank. For other state-chartered depository institutions, the term “well-capitalized” has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency.

§ 362.3 Activities of insured State banks.

(a) *Equity investments.* (1) *Prohibited equity investments.* No insured State bank may directly or indirectly acquire or retain as principal any equity investment of a type that is not permissible for a national bank unless one of the exceptions in paragraph (a)(2) of this section applies.

(2) *Exceptions.* (i) *Equity investment in majority-owned subsidiaries.* An insured State bank may acquire or retain an equity investment in a subsidiary of which the bank is a majority owner, provided that the subsidiary is engaging in activities that are allowed pursuant to the provisions of or by application under § 362.4(b).

(ii) *Investments in qualified housing projects.* An insured State bank may invest as a limited partner in a partnership, or as a noncontrolling interest holder of a limited liability company, the sole purpose of which is to invest in the acquisition, rehabilitation, or new construction of a qualified housing project, provided that the bank’s aggregate investment (including legally binding commitments) does not exceed, when made, 2 percent of total assets as of the date of the bank’s most recent consolidated report of condition prior to making the investment. For the purposes of this paragraph (a)(2)(ii), *Aggregate investment* means the total book value of the bank’s investment in the real estate calculated in accordance with the instructions for the preparation of the consolidated report of condition. *Qualified housing project* means residential real estate intended to primarily benefit lower income persons throughout the period of the bank’s investment including any project that has received an award of low income

housing tax credits under section 42 of the Internal Revenue Code (26 U.S.C. 42) (such as a reservation or allocation of credits) from a State or local housing credit agency. A residential real estate project that does not qualify for the tax credit under section 42 of the Internal Revenue Code will qualify under this exception if 50 percent or more of the housing units are to be occupied by lower income persons. A project will be considered residential despite the fact that some portion of the total square footage of the project is utilized for commercial purposes, provided that such commercial use is not the primary purpose of the project. *Lower income* has the same meaning as “low income” and “moderate income” as defined for the purposes of §345.12(n) (1) and (2) of this chapter.

(iii) *Grandfathered investments in common or preferred stock; shares of investment companies.* (A) *General.* An insured State bank that is located in a State which as of September 30, 1991, authorized investment in:

(I)(i) Common or preferred stock listed on a national securities exchange (listed stock); or

(ii) Shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (registered shares); and

(2) Which during the period beginning on September 30, 1990, and ending on November 26, 1991, made or maintained an investment in listed stock or registered shares, may retain whatever lawfully acquired listed stock or registered shares it held and may continue to acquire listed stock and/or registered shares, provided that the bank files a notice in accordance with section 24(f)(6) of the Federal Deposit Insurance Act in compliance with §303.121 of this chapter and the FDIC processes the notice without objection under §303.122 of this chapter. Approval will be granted only if the FDIC determines that acquiring or retaining the stock or shares does not pose a significant risk to the appropriate deposit insurance fund. Approval may be subject to whatever conditions or restrictions the FDIC determines are necessary or appropriate.

(B) *Loss of grandfather exception.* The exception for grandfathered invest-

ments under paragraph (a)(2)(iii)(A) of this section shall no longer apply if the bank converts its charter or the bank or its parent holding company undergoes a change in control. If any of these events occur, the bank may retain its existing investments unless directed by the FDIC or other applicable authority to divest the listed stock or registered shares.

(C) *Maximum permissible investment.* A bank's aggregate investment in listed stock and registered shares under paragraph (a)(2)(iii)(A) of this section shall in no event exceed, when made, 100 percent of the bank's tier one capital as measured on the bank's most recent consolidated report of condition (call report) prior to making any such investment. The lower of the bank's cost as determined in accordance with call report instructions or the market value of the listed stock and shares shall be used to determine compliance. The FDIC may determine when acting upon a notice filed in accordance with paragraph (a)(2)(iii)(A)(2) of this section that the permissible limit for any particular insured State bank is something less than 100 percent of tier one capital.

(iv) *Stock investment in insured depository institutions owned exclusively by other banks and savings associations.* An insured State bank may acquire or retain the stock of an insured depository institution if the insured depository institution engages only in activities permissible for national banks; the insured depository institution is subject to examination and regulation by a State bank supervisor; the voting stock is owned by 20 or more insured depository institutions, but no one institution owns more than 15 percent of the voting stock; and the insured depository institution's stock (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees) is owned only by insured depository institutions.

(v) *Stock investment in insurance companies—(A) Stock of director and officer liability insurance company.* An insured State bank may acquire and retain up to 10 percent of the outstanding stock of a corporation that solely provides or

reinsures directors', trustees', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions.

(B) *Stock of savings bank life insurance company.* An insured State bank located in Massachusetts, New York, or Connecticut may own stock in a savings bank life insurance company, provided that the savings bank life insurance company provides written disclosures to purchasers or potential purchasers of life insurance policies, other insurance products, and annuities that are consistent with the disclosures described in the Interagency Statement on the Retail Sale of Nondeposit Investment Products (FIL-9-94,¹ February 17, 1994) or any successor requirement which indicates that the policies, products, and annuities are not FDIC insured deposits, are not guaranteed by the bank and are subject to investment risks, including possible loss of the principal amount invested.

(b) *Activities other than equity investments*—(1) *Prohibited activities.* An insured State bank may not directly or indirectly engage as principal in any activity, that is not an equity investment, and is of a type not permissible for a national bank unless one of the exceptions in paragraph (b)(2) of this section applies.

(2) *Exceptions*—(i) *Consent obtained through application.* An insured State bank that meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency may conduct activities prohibited by paragraph (b)(1) of this section if the bank obtains the FDIC's prior written consent. Consent will be given only if the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund. Applications for consent should be filed in accordance with § 303.121 of this chapter and will be processed under § 303.122(b) of this chapter. Approvals granted under § 303.122(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be nec-

essary to protect the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of Federal deposit insurance and other applicable law.

(ii) *Insurance underwriting*—(A) *Savings bank life insurance.* An insured State bank that is located in Massachusetts, New York or Connecticut may provide as principal savings bank life insurance through a department of the bank, provided that the department meets the core standards of paragraph (c) of this section or submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedures in § 303.122(b) of this chapter, and the department provides purchasers or potential purchasers of life insurance policies, other insurance products and annuities written disclosures that are consistent with the disclosures described in the Interagency Statement on the Retail Sale of Nondeposit Investment Products (FIL-9-94, February 17, 1994) and any successor requirement which indicates that the policies, products and annuities are not FDIC insured deposits, are not guaranteed by the bank, and are subject to investment risks, including the possible loss of the principal amount invested.

(B) *Federal crop insurance.* Any insured State bank that was providing insurance as principal on or before September 30, 1991, which was reinsured in whole or in part by the Federal Crop Insurance Corporation, may continue to do so.

(C) *Grandfathered insurance underwriting.* A well-capitalized insured State bank that on November 21, 1991, was lawfully providing insurance as principal through a department of the bank may continue to provide the same types of insurance as principal to the residents of the State or States in which the bank did so on such date provided that the bank's department meets the core standards of paragraph (c) of this section, or submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedures in § 303.122(b) of this chapter.

(iii) *Acquiring and retaining adjustable rate and money market preferred stock.*

¹Financial institution letters (FILs) are available in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. 20429.

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(A) An insured State bank's investment of up to 15 percent of the bank's tier one capital in adjustable rate preferred stock or money market (auction rate) preferred stock does not represent a significant risk to the deposit insurance funds. An insured State bank may conduct this activity without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(B) An insured State bank may acquire or retain other instruments of a type determined by the FDIC to have the character of debt securities and not to represent a significant risk to the deposit insurance funds. Such instruments shall be included in the 15 percent of tier one capital limit imposed in paragraph (b)(2)(iii)(A) of this section. An insured State bank may conduct this activity without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(c) *Core standards.* For any insured State bank to be eligible to conduct insurance activities listed in paragraph (b)(2)(ii)(A) or (C) of this section, the bank must conduct the activities in a department that meets the following core separation and operating standards:

(1) The department is physically distinct from the remainder of the bank;

(2) The department maintains separate accounting and other records;

(3) The department has assets, liabilities, obligations and expenses that are separate and distinct from those of the remainder of the bank;

(4) The department is subject to State statute that requires its obligations, liabilities and expenses be satis-

fied only with the assets of the department; and

(5) The department informs its customers that only the assets of the department may be used to satisfy the obligations of the department.

§362.4 Subsidiaries of insured State banks.

(a) *Prohibition.* A subsidiary of an insured State bank may not engage as principal in any activity that is not of a type permissible for a subsidiary of a national bank, unless it meets one of the exceptions in paragraph (b) of this section.

(b) *Exceptions—(1) Consent obtained through application.* A subsidiary of an insured State bank may conduct otherwise prohibited activities if the bank obtains the FDIC's prior written consent and the insured State bank meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency. Consent will be given only if the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund. Applications for consent should be filed in accordance with §303.121 of this chapter and will be processed under §303.122(b) of this chapter. Approvals granted under §303.122(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of Federal deposit insurance and other applicable law.

(2) *Grandfathered insurance underwriting subsidiaries.* A subsidiary of an insured State bank may:

(i) Engage in grandfathered insurance underwriting if the insured State bank or its subsidiary on November 21, 1991, was lawfully providing insurance as principal. The subsidiary may continue to provide the same types of insurance as principal to the residents of the State or states in which the bank or subsidiary did so on such date provided that:

(A)(I) The bank meets the capital requirements of paragraph (e) of this section; and

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(2) The subsidiary is an “eligible subsidiary” as described in paragraph (c)(2) of this section; or

(B) The bank submits an application in compliance with §303.121 of this chapter and the FDIC grants its consent under the procedures in §303.122(b) of this chapter.

(ii) Continue to provide as principal title insurance, provided the bank was required before June 1, 1991, to provide title insurance as a condition of the bank’s initial chartering under State law and neither the bank nor its parent holding company undergoes a change in control.

(iii) May continue to provide as principal insurance which is reinsured in whole or in part by the Federal Crop Insurance Corporation if the subsidiary was engaged in the activity on or before September 30, 1991.

(3) *Majority-owned subsidiaries’ ownership of equity investments that represent a control interest in a company.* The FDIC has determined that investment in the following by a majority-owned subsidiary of an insured State bank does not represent a significant risk to the deposit insurance funds:

(i) Equity investment in a company engaged in real estate or securities activities authorized in paragraph (b)(5) of this section if the bank complies with the following restrictions and files a notice in compliance with §303.121 of this chapter and the FDIC processes the notice without objection under §303.122(a) of this chapter. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activity if the facts and circumstances warrant such action. If changes to the management or business plan of the company at any time result in material changes to the nature of the company’s business or the manner in which its business is conducted, the insured State bank shall advise the appropriate regional director (DOS) in writing within 10 business days after such change. Investment under this paragraph is authorized if:

(A) The majority-owned subsidiary controls the company;

(B) The bank meets the core eligibility criteria of paragraph (c)(1) of this section;

(C) The majority-owned subsidiary meets the core eligibility criteria of paragraph (c)(2) of this section (including any modifications thereof applicable under paragraph (b)(5)(i) of this section), or the company is a corporation meeting such criteria;

(D) The bank’s transactions with the majority-owned subsidiary, and the bank’s transactions with the company, comply with the investment and transaction limits of paragraph (d) of this section;

(E) The bank complies with the capital requirements of paragraph (e) of this section with respect to the majority-owned subsidiary and the company; and

(F) To the extent the company is engaged in securities activities authorized by paragraph (b)(5)(ii) of this section, the bank and the company comply with the additional requirements therein as if the company were a majority-owned subsidiary.

(ii) Equity securities of a company engaged in the following activities, if the majority-owned subsidiary controls the company or the company is controlled by insured depository institutions, and the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The FDIC consents that a majority-owned subsidiary may conduct such activity without first obtaining the FDIC’s consent. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activity if the facts and circumstances warrant such action:

(A) Any activity that is permissible for a national bank, including such permissible activities that may require the company to register as a securities broker;

(B) Acting as an insurance agency;

(C) Engaging in any activity permissible for an insured State bank under §362.3(b)(2)(iii) to the same extent permissible for the insured bank thereunder, so long as instruments held under this paragraph (b)(3)(ii)(C), paragraph (b)(7) of this section, and §362.3(b)(2)(iii) in the aggregate do not exceed the limit set by §362.3(b)(2)(iii);

(D) Engaging in any activity permissible for a majority-owned subsidiary of an insured State bank under paragraph (b)(6) of this section to the same extent and manner permissible for the majority-owned subsidiary thereunder; and

(4) *Majority-owned subsidiary's ownership of certain securities that do not represent a control interest*—(i) *Grandfathered investments in common or preferred stock and shares of investment companies.* Any insured State bank that has received approval to invest in common or preferred stock or shares of an investment company pursuant to §362.3(a)(2)(iii) may conduct the approved investment activities through a majority-owned subsidiary of the bank without any additional approval from the FDIC provided that any conditions or restrictions imposed with regard to the approval granted under §362.3(a)(2)(iii) are met.

(ii) *Bank stock.* An insured State bank may indirectly through a majority-owned subsidiary organized for such purpose invest in up to ten percent of the outstanding stock of another insured bank.

(5) *Majority-owned subsidiaries conducting real estate investment activities and securities underwriting.* The FDIC has determined that the following activities do not represent a significant risk to the deposit insurance funds, provided that the activities are conducted by a majority-owned subsidiary of an insured State bank in compliance with the core eligibility requirements listed in paragraph (c) of this section; any additional requirements listed in paragraph (b)(5) (i) or (ii) of this section; the bank complies with the investment and transaction limitations of paragraph (d) of this section; and the bank meets the capital requirements of paragraph (e) of this section. The FDIC consents that these listed activities may be conducted by a majority-owned subsidiary of an insured State bank if the bank files a notice in compliance with §303.121 of this chapter and the FDIC processes the notice without objection under §303.122(a) of this chapter. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activities if the facts and

circumstances warrant such action. If changes to the management or business plan of the majority-owned subsidiary at any time result in material changes to the nature of the majority-owned subsidiary's business or the manner in which its business is conducted, the insured State bank shall advise the appropriate regional director (DOS) in writing within 10 business days after such change. Such a majority-owned subsidiary may:

(i) *Real estate investment activities.* Engage in real estate investment activities. However, the requirements of paragraph (c)(2) (ii), (v), (vi), and (xi) of this section need not be met if the bank's investment in the equity securities of the subsidiary does not exceed 2 percent of the bank's tier one capital; the bank has only one subsidiary engaging in real estate investment activities; and the bank's total investment in the subsidiary does not include any extensions of credit from the bank to the subsidiary, any debt instruments issued by the subsidiary, or any other transaction originated by the bank that is used to benefit the subsidiary.

(ii) *Securities activities.* Engage in the public sale, distribution or underwriting of securities that are not permissible for a national bank under section 16 of the Banking Act of 1933 (12 U.S.C. 24 Seventh), provided that the following additional conditions are, and continue to be, met:

(A) The state-chartered depository institution adopts policies and procedures, including appropriate limits on exposure, to govern the institution's participation in financing transactions underwritten or arranged by an underwriting majority-owned subsidiary;

(B) The state-chartered depository institution may not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by a majority-owned subsidiary unless the state-chartered depository institution notifies the customer that the majority-owned subsidiary is underwriting or distributing the security;

(C) The majority-owned subsidiary is registered with the Securities and Exchange Commission, is a member in good standing with the appropriate

self-regulatory organization, and promptly informs the appropriate regional director (DOS) in writing of any material actions taken against the majority-owned subsidiary or any of its employees by the State, the appropriate self-regulatory organizations or the Securities and Exchange Commission; and

(D) The state-chartered depository institution does not knowingly purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the majority-owned subsidiary unless the purchase is approved by the state-chartered depository institution's board of directors before the securities are initially offered for sale to the public.

(6) *Real estate leasing.* A majority-owned subsidiary of an insured State bank acting as lessor under a real property lease which is the equivalent of a financing transaction, meeting the lease criteria of paragraph (b)(6)(i) of this section and the underlying real estate requirements of paragraph (b)(6)(ii) of this section, does not represent a significant risk to the deposit insurance funds. A majority-owned subsidiary may conduct this activity without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activity if the facts and circumstances warrant such action.

(i) *Lease criteria—(A) Capital lease.* The lease must qualify as a capital lease as to the lessor under generally accepted accounting principles.

(B) *Nonoperating basis.* The bank and the majority-owned subsidiary shall not, directly or indirectly, provide or be obligated to provide servicing, repair, or maintenance to the property, except that the lease may include provisions permitting the subsidiary to protect the value of the leased property in the event of a change in circumstances that increases the subsidiary's exposure to loss, or the subsidiary may take reasonable and appro-

priate action to salvage or protect the value of the leased property in such circumstances.

(ii) *Underlying real property requirements—(A) Acquisition.* The majority-owned subsidiary may acquire specific real estate to be leased only after the subsidiary has entered into:

(1) A lease meeting the requirements of paragraph (b)(6)(i) of this section;

(2) A legally binding written commitment to enter into such a lease; or

(3) A legally binding written agreement that indemnifies the subsidiary against loss in connection with its acquisition of the property.

(B) *Improvements.* Any expenditures by the majority-owned subsidiary to make reasonable repairs, renovations, and improvements necessary to render the property suitable to the lessee shall not exceed 25 percent of the majority-owned subsidiary's full investment in the real estate.

(C) *Divestiture.* At the expiration of the initial lease (including any renewals or extensions thereof), the majority-owned subsidiary shall, as soon as practicable but in any event no less than two years, either:

(1) Re-lease the property under a lease meeting the requirement of paragraph (b)(6)(i)(B) of this section; or

(2) Divest itself of all interest in the property.

(7) *Acquiring and retaining adjustable rate and money market preferred stock and similar instruments.* The FDIC has determined it does not present a significant risk to the deposit insurance funds for a majority-owned subsidiary of an insured State bank to engage in any activity permissible for an insured State bank under § 362.3(b)(2)(iii), so long as instruments held under this paragraph, paragraph (b)(3)(ii)(C) of this section, and § 362.3(b)(2)(iii) in the aggregate do not exceed the limit set by § 362.3(b)(2)(iii). A majority-owned subsidiary may conduct this activity without first obtaining the FDIC's consent, provided that the bank meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activity if the

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facts and circumstances warrant such action.

(c) *Core eligibility requirements.* If specifically required by this part or by FDIC order, any state-chartered depository institution that wishes to be eligible and continue to be eligible to conduct as principal activities through a subsidiary that are not permissible for a subsidiary of a national bank must be an “eligible depository institution” and the subsidiary must be an “eligible subsidiary”.

(1) A state-chartered depository institution is an “eligible depository institution” if it:

(i) Has been chartered and operating for three or more years, unless the appropriate regional director (DOS) finds that the state-chartered depository institution is owned by an established, well-capitalized, well-managed holding company or is managed by seasoned management;

(ii) Has an FDIC-assigned composite rating of 1 or 2 assigned under the Uniform Financial Institutions Rating System (UFIRS) (or such other comparable rating system as may be adopted in the future) as a result of its most recent Federal or State examination for which the FDIC assigned a rating;

(iii) Received a rating of 1 or 2 under the “management” component of the UFIRS as assigned by the institution’s appropriate Federal banking agency;

(iv) Has a satisfactory or better Community Reinvestment Act rating at its most recent examination conducted by the institution’s appropriate Federal banking agency;

(v) Has a compliance rating of 1 or 2 at its most recent examination conducted by the institution’s appropriate Federal banking agency; and

(vi) Is not subject to a cease and desist order, consent order, prompt corrective action directive, formal or informal written agreement, or other administrative agreement with its appropriate Federal banking agency or chartering authority.

(2) A subsidiary of a state-chartered depository institution is an “eligible subsidiary” if it:

(i) Meets applicable statutory or regulatory capital requirements and has sufficient operating capital in light of the normal obligations that are reason-

ably foreseeable for a business of its size and character within the industry;

(ii) Is physically separate and distinct in its operations from the operations of the state-chartered depository institution, provided that this requirement shall not be construed to prohibit the state-chartered depository institution and its subsidiary from sharing the same facility if the area where the subsidiary conducts business with the public is clearly distinct from the area where customers of the state-chartered depository institution conduct business with the institution. The extent of the separation will vary according to the type and frequency of customer contact;

(iii) Maintains separate accounting and other business records;

(iv) Observes separate business entity formalities such as separate board of directors’ meetings;

(v) Has a chief executive officer of the subsidiary who is not an employee of the institution;

(vi) Has a majority of its board of directors who are neither directors nor officers of the state-chartered depository institution;

(vii) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the state-chartered depository institution and that the state-chartered depository institution is not responsible for and does not guarantee the obligations of the subsidiary;

(viii) Has only one business purpose within the types described in paragraphs (b)(2) and (b)(5) of this section;

(ix) Has a current written business plan that is appropriate to the type and scope of business conducted by the subsidiary;

(x) Has qualified management and employees for the type of activity contemplated, including all required licenses and memberships, and complies with industry standards; and

(xi) Establishes policies and procedures to ensure adequate computer, audit and accounting systems, internal risk management controls, and has necessary operational and managerial infrastructure to implement the business plan.

(d) *Investment and transaction limits*—(1) *General*. If specifically required by this part or FDIC order, the following conditions and restrictions apply to an insured State bank and its subsidiaries that engage in and wish to continue to engage in activities which are not permissible for a national bank subsidiary.

(2) *Investment limits*—(i) *Aggregate investment in subsidiaries*. An insured state bank's aggregate investment in all subsidiaries conducting activities subject to this paragraph (d) shall not exceed 20 percent of the insured State bank's tier one capital.

(ii) *Definition of investment*. (A) For purposes of this paragraph (d), the term "investment" means:

(1) Any extension of credit to the subsidiary by the insured State bank;

(2) Any debt securities, as such term is defined in part 344 of this chapter, issued by the subsidiary held by the insured State bank;

(3) The acceptance by the insured State bank of securities issued by the subsidiary as collateral for an extension of credit to any person or company; and

(4) Any extensions of credit by the insured State bank to any third party for the purpose of making a direct investment in the subsidiary, making any investment in which the subsidiary has an interest, or which is used for the benefit of, or transferred to, the subsidiary.

(B) For the purposes of this paragraph (d), the term "investment" does not include:

(1) Extensions of credit by the insured State bank to finance sales of assets by the subsidiary which do not involve more than the normal degree of risk of repayment and are extended on terms that are substantially similar to those prevailing at the time for comparable transactions with or involving unaffiliated persons or companies;

(2) An extension of credit by the insured State bank to the subsidiary that is fully collateralized by government securities, as such term is defined in § 344.3 of this chapter; or

(3) An extension of credit by the insured State bank to the subsidiary that is fully collateralized by a segregated deposit in the insured State bank.

(3) *Transaction requirements*—(i) *Arm's length transaction requirement*. With the exception of giving the subsidiary immediate credit for uncollected items received in the ordinary course of business, an insured State bank may not carry out any of the following transactions with a subsidiary subject to this paragraph (d) unless the transaction is on terms and conditions that are substantially the same as those prevailing at the time for comparable transactions with unaffiliated parties:

(A) Make an investment in the subsidiary;

(B) Purchase from or sell to the subsidiary any assets (including securities);

(C) Enter into a contract, lease, or other type of agreement with the subsidiary;

(D) Pay compensation to a majority-owned subsidiary or any person or company who has an interest in the subsidiary; or

(E) Engage in any such transaction in which the proceeds thereof are used for the benefit of, or are transferred to, the subsidiary.

(ii) *Prohibition on purchase of low quality assets*. An insured State bank is prohibited from purchasing a low quality asset from a subsidiary subject to this paragraph (d). For purposes of this subsection, "low quality asset" means:

(A) An asset classified as "substandard", "doubtful", or "loss" or treated as "other assets especially mentioned" in the most recent report of examination of the bank;

(B) An asset in a nonaccrual status;

(C) An asset on which principal or interest payments are more than 30 days past due; or

(D) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(iii) *Insider transaction restriction*. Neither the insured State bank nor the subsidiary subject to this paragraph (d) may enter into any transaction (exclusive of those covered by § 337.3 of this chapter) with the bank's executive officers, directors, principal shareholders or related interests of such persons which relate to the subsidiary's activities unless:

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(A) The transactions are on terms and conditions that are substantially the same as those prevailing at the time for comparable transactions with persons not affiliated with the insured State bank; or

(B) The transactions are pursuant to a benefit or compensation program that is widely available to employees of the bank, and that does not give preference to the bank's executive officers, directors, principal shareholders or related interests of such persons over other bank employees.

(iv) *Anti-tying restriction.* Neither the insured State bank nor the majority-owned subsidiary may require a customer to either buy any product or use any service from the other as a condition of entering into a transaction.

(4) *Collateralization requirements.* (i) An insured State bank is prohibited from making an investment in a subsidiary subject to this paragraph (d) unless such transaction is fully-collateralized at the time the transaction is entered into. No insured State bank may accept a low quality asset as collateral. An extension of credit is fully collateralized if it is secured at the time of the transaction by collateral having a market value equal to at least:

(A) 100 percent of the amount of the transaction if the collateral is composed of:

(1) Obligations of the United States or its agencies;

(2) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(3) Notes, drafts, bills of exchange or bankers acceptances that are eligible for rediscount or purchase by the Federal Reserve Bank; or

(4) A segregated, earmarked deposit account with the insured State bank;

(B) 110 percent of the amount of the transaction if the collateral is composed of obligations of any State or political subdivision of any State;

(C) 120 percent of the amount of the transaction if the collateral is composed of other debt instruments, including receivables; or

(D) 130 percent of the amount of the transaction if the collateral is composed of stock, leases, or other real or personal property.

(ii) An insured State bank may not release collateral prior to proportional payment of the extension of credit; however, collateral may be substituted if there is no diminution of collateral coverage.

(5) *Investment and transaction limits extended to insured State bank subsidiaries.* For purposes of applying paragraphs (d)(2) through (d)(4) of this section, any reference to "insured State bank" means the insured State bank and any subsidiaries of the insured State bank which are not themselves subject under this part or FDIC order to the restrictions of this paragraph (d).

(e) *Capital requirements.* If specifically required by this part or by FDIC order, any insured State bank that wishes to conduct or continue to conduct as principal activities through a subsidiary that are not permissible for a subsidiary of a national bank must:

(1) Be well-capitalized after deducting from its tier one capital the investment in equity securities of the subsidiary as well as the bank's pro rata share of any retained earnings of the subsidiary;

(2) Reflect this deduction on the appropriate schedule of the bank's consolidated report of income and condition; and

(3) Use such regulatory capital amount for the purposes of the bank's assessment risk classification under part 327 of this chapter and its categorization as a "well-capitalized", an "adequately capitalized", an "under-capitalized", or a "significantly under-capitalized" institution as defined in §325.103(b) of this chapter, provided that the capital deduction shall not be used for purposes of determining whether the bank is "critically under-capitalized" under part 325 of this chapter.

§ 362.5 Approvals previously granted.

(a) *FDIC consent by order or notice.* An insured State bank that previously filed an application or notice under part 362 in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), and obtained the FDIC's consent to engage in an activity or to acquire or retain a majority-owned subsidiary engaging as principal

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in an activity or acquiring and retaining any investment that is prohibited under this subpart may continue that activity or retain that investment without seeking the FDIC's consent, provided that the insured State bank and its subsidiary, if applicable, continue to meet the conditions and restrictions of the approval. An insured State bank which was granted approval based on conditions which differ from the requirements of § 362.4(c)(2), (d) and (e) will be considered to meet the conditions and restrictions of the approval relating to being an eligible subsidiary, meeting investment and transactions limits, and meeting capital requirements if the insured State bank and subsidiary meet the requirements of § 362.4(c)(2), (d) and (e). If the majority-owned subsidiary is engaged in real estate investment activities not exceeding 2 percent of the tier one capital of a bank and meeting the other conditions of § 362.4(b)(5)(i), the majority-owned subsidiary's compliance with § 362.4(c)(2) under the preceding sentence may be pursuant to the modifications authorized by § 362.4(b)(5)(i). Once an insured State bank elects to comply with § 362.4(c)(2), (d), and (e), it may not revert to the corresponding provisions of the approval order.

(b) *Approvals by regulation*—(1) *Securities underwriting*. If an insured state nonmember bank engages in securities activities covered by § 362.4(b)(5)(ii), and prior to January 1, 1999, engaged in securities activities under and in compliance with the restrictions of § 337.4(b) through (c), § 337.4(e), or § 337.4(h) of this chapter, having filed the required notice under § 337.4(d) of this chapter, the insured State bank may continue those activities if the bank and its majority-owned subsidiaries comply with the restrictions set forth in §§ 362.4(b)(5)(ii) and 362.4(c), (d), and (e) by January 1, 2000. During the one-year period of transition between January 1, 1999, and January 1, 2000, the bank and its majority-owned subsidiary must meet the restrictions set forth in § 337.4 of this chapter until the requirements of §§ 362.4(b)(5)(ii) and 362.4(c), (d) and (e) are met. If the bank will not meet these requirements, the bank must obtain the FDIC's consent to continue those activities under § 362.4(b)(1).

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(2) *Grandfathered insurance underwriting*. An insured State bank which is directly providing insurance as principal pursuant to § 362.4(c)(2)(i) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), may continue that activity if it complies with the provisions of § 362.3(b)(2)(ii)(C) by April 1, 1999. An insured State bank indirectly providing insurance as principal through a subsidiary pursuant to § 362.3(b)(7) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), may continue that activity if it complies with the provisions of § 362.4(b)(2)(i) by April 1, 1999. During the ninety-day period of transition between January 1, 1999 and April 1, 1999, the bank and its majority-owned subsidiary must meet the restrictions set forth in § 362.4(c)(2)(i) or § 362.3(b)(7) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), as applicable, until the requirements of § 362.3(b)(2)(ii)(C) or § 362.4(b)(2)(i) are met. If the insured State bank or its subsidiary will not meet these requirements, as applicable, the insured State bank must submit an application in compliance with § 303.121 of this chapter and obtain the FDIC's consent in accordance with § 303.122(b) of this chapter.

(3) *Stock of certain corporations*. An insured State bank owning indirectly through a majority-owned subsidiary stock of a corporation that engages solely in activities permissible for a bank service corporation pursuant to § 362.4(c)(3)(iv)(C) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), or stock of a corporation which engages solely in activities which are not "as principal" pursuant to § 362.4(c)(3)(iv)(D) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), may continue that activity if it complies with the provisions of § 362.4(b)(3) by April 1, 1999. During the ninety-day period of transition between January 1, 1999 and April 1, 1999, the bank and its majority-owned subsidiary must meet the restrictions set forth in § 362.4(c)(3)(iv)(C) or § 362.4(c)(3)(iv)(D) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1,

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1998), as applicable, until the requirements of § 362.4(b)(3) are met. If the insured State bank or its subsidiary will not meet these requirements, as applicable, the insured State bank must apply for the FDIC's consent under § 362.4(b)(1).

(4) [Reserved]

(5) [Reserved]

(6) *Adjustable rate or money market preferred stock.* An insured State bank owning adjustable rate or money market (auction rate) preferred stock pursuant to § 362.4(c)(3)(v) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), in excess of the amount limit in § 362.3(b)(2)(iii) may continue to hold any overlimit shares of such stock acquired before January 1, 1999, until redeemed or repurchased by the issuer, but such stock shall be included as part of the amount limit in § 362.3(b)(2)(iii) when determining whether the bank may acquire new stock thereunder.

(c) *Charter conversions.* (1) An insured State bank that has converted its charter from an insured state savings association may continue activities through a majority-owned subsidiary that were permissible prior to the time it converted its charter only if the insured State bank receives the FDIC's consent. Except as provided in paragraph (c)(2) of this section, the insured State bank should apply under § 362.4(b)(1), submit any notice required under § 362.4(b) (4) or (5), or comply with the provisions of § 362.4(b) (3), (6), or (7) if applicable, to continue the activity.

(2) *Exception for prior consent.* If the FDIC had granted consent to the savings association under section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831(e)) prior to the time the savings association converted its charter, the insured State bank may continue the activities without providing notice or making application to the FDIC, provided that the bank and its subsidiary as applicable are in compliance with:

(i) The terms of the FDIC approval order; and

(ii) The provisions of § 362.4(c)(2), (d), and (e) regarding operating as an "eligible subsidiary", "investment and

transaction limits", and "capital requirements".

(3) *Divestiture.* An insured State bank that does not receive FDIC consent shall divest of the nonconforming investment as soon as practical but in no event later than two years from the date of charter conversion.

Subpart B—Safety and Soundness Rules Governing Insured State Nonmember Banks

§ 362.6 Purpose and scope.

This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter apply to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. The FDIC intends to allow insured state nonmember banks and their subsidiaries to undertake only safe and sound activities and investments that would not present a significant risk to the deposit insurance fund and that are consistent with the purposes of Federal deposit insurance and other law. The following standards shall apply for insured state nonmember banks to conduct real estate investment activities through a subsidiary if those activities are permissible for a national bank subsidiary but are not permissible for the national bank parent itself. Additionally, the following standards shall apply to affiliates of insured state nonmember banks that are not affiliated with a bank holding company if those affiliates engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities.

§ 362.7 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Affiliate* shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state nonmember bank, but does not include a subsidiary of an insured state nonmember bank.

(b) *Activity, company, control, equity security, insured state nonmember bank, real estate investment activity, security, and subsidiary* have the same meaning as provided in subpart A of this part.

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§ 362.8 Restrictions on activities of insured state nonmember banks.

(a) *Real estate investment activities by subsidiaries of insured state nonmember banks.* The FDIC has found that real estate investment activities may have adverse effects on the safety and soundness of insured state nonmember banks. Notwithstanding any interpretations, orders, circulars or official bulletins issued by the Office of the Comptroller of the Currency regarding activities permissible for subsidiaries of a national bank that are not permissible for the parent national bank itself under 12 CFR 5.34(f), insured state nonmember banks may not establish or acquire a subsidiary that engages in such real estate investment activities unless the insured state nonmember bank:

(1) Has an approval previously granted by the FDIC and continues to meet the conditions and restrictions of the approval; or

(2) Meets the requirements for engaging in real estate investment activities as set forth in § 362.4(b)(5), and submits a corresponding notice in compliance with § 303.121 of this chapter and the FDIC processes the notice without objection under § 303.122(a) of this chapter; or submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedure in § 303.122(b) of this chapter.

(b) *Affiliation with securities companies.* The FDIC has found that an unrestricted affiliation between an insured state nonmember bank and a securities company may have adverse effects on the safety and soundness of insured state nonmember banks. An insured state nonmember bank which is affiliated with a company that is not treated as a bank holding company pursuant to section 4(f) of the Bank Holding Company Act (12 U.S.C. 1843(f)) is prohibited from becoming or remaining affiliated with any company that directly engages in the public sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities which is not permissible for a national bank unless it submits an application in compliance with § 303.121 of this chapter and the FDIC grants its consent under the procedure in § 303.122(b) of this chapter, or:

(1) The securities business of the affiliate is physically separate and distinct in its operations from the operations of the bank, provided that this requirement shall not be construed to prohibit the bank and its affiliate from sharing the same facility if the area where the affiliate conducts retail sales activity with the public is physically distinct from the routine deposit taking area of the bank;

(2) The affiliate has a chief executive officer who is not an employee of the bank;

(3) A majority of the affiliate's board of directors are not directors, officers, or employees of the bank;

(4) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and the state-chartered depository institution is not responsible for and does not guarantee the obligations of the affiliate;

(5) The bank adopts policies and procedures, including appropriate limits on exposure, to govern its participation in financing transactions underwritten by an underwriting affiliate;

(6) The bank does not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by an affiliate unless it notifies the customer that the entity underwriting, making a market, distributing or dealing in the securities is an affiliate of the bank;

(7) The bank does not purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the affiliate unless the purchase is approved by the bank's board of directors before the securities are initially offered for sale to the public;

(8) The bank does not condition any extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's affiliate to underwrite or distribute the company's securities;

(9) The bank does not condition any extension of credit or the offering of any service to any person or company on the requirement that the person or

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company purchase any security underwritten or distributed by the affiliate; and

(10) The bank complies with the investment and transaction limitations of §362.4(d). For the purposes of applying these restrictions, references to the term “subsidiary” in §362.4(d)(2), (3), and (4) shall be deemed to refer to the affiliate. For the purposes of applying these limitations, the term “investment” as defined in §362.4(d)(2)(i) shall also include any equity securities of the affiliate held by the insured State bank.

Subpart C—Activities of Insured State Savings Associations

§362.9 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart H of part 303 of this chapter, implements the provisions of section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) that restrict and prohibit insured state savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for Federal savings associations and their service corporations. The phrase “activity permissible for a Federal savings association” means any activity authorized for Federal savings associations under any statute including the Home Owners’ Loan Act (HOLA, 12 U.S.C. 1464 *et seq.*), as well as activities recognized as permissible for a Federal savings association in regulations, official thrift bulletins, orders or written interpretations issued by the Office of Thrift Supervision (OTS), or its predecessor, the Federal Home Loan Bank Board.

(b) This subpart does not cover the following activities:

(1) Activities conducted by the insured state savings association other than “as principal”, defined for purposes of this subpart as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel

services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services.

(2) Interests in real estate in which the real property is used or intended in good faith to be used within a reasonable time by an insured savings association or its service corporations as offices or related facilities for the conduct of its business or future expansion of its business or used as public welfare investments of a type and in an amount permissible for Federal savings associations.

(3) Equity investments acquired in connection with debts previously contracted (DPC) if the insured savings association or its service corporation takes only such actions as would be permissible for a Federal savings association’s or its service corporation’s DPC holdings.

(c) The FDIC intends to allow insured state savings associations and their service corporations to undertake only safe and sound activities and investments that do not present significant risks to the deposit insurance funds and that are consistent with the purposes of Federal deposit insurance and other applicable law. This subpart does not authorize any insured state savings association to make investments or conduct activities that are not authorized or that are prohibited by either Federal or state law.

§362.10 Definitions.

For the purposes of this subpart, the definitions provided in §362.2 apply. Additionally, the following definitions apply to this subpart:

(a) *Affiliate* shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state savings association.

(b) *Corporate debt securities not of investment grade* means any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The term shall not include any obligation issued or guaranteed by a corporation that may be held by a Federal savings association without limitation as to percentage of assets

under subparagraphs (D), (E), or (F) of section 5(c)(1) of HOLA (12 U.S.C. 1464(c)(1) (D), (E), (F)).

(c) *Insured state savings association* means any state-chartered savings association insured by the FDIC.

(d) *Qualified affiliate* means, in the case of a stock insured state savings association, an affiliate other than a subsidiary or an insured depository institution. In the case of a mutual savings association, “qualified affiliate” means a subsidiary other than an insured depository institution provided that all of the savings association’s investments in, and extensions of credit to, the subsidiary are deducted from the savings association’s capital.

(e) *Service corporation* means any corporation the capital stock of which is available for purchase by savings associations.

§ 362.11 Activities of insured State savings associations.

(a) *Equity investments—(1) Prohibited investments.* No insured state savings association may directly acquire or retain as principal any equity investment of a type, or in an amount, that is not permissible for a Federal savings association unless the exception in paragraph (a)(2) of this section applies.

(2) *Exception: Equity investment in service corporations.* An insured state savings association that is and continues to be in compliance with the applicable capital standards as prescribed by the appropriate Federal banking agency may acquire or retain an equity investment in a service corporation:

(i) Not permissible for a Federal savings association to the extent the service corporation is engaging in activities that are allowed pursuant to the provisions of or an application under § 362.12(b); or

(ii) Of a type permissible for a Federal savings association, but in an amount exceeding the investment limits applicable to Federal savings associations, if the insured state savings association obtains the FDIC’s prior consent. Consent will be given only if the FDIC determines that the amount of the investment in a service corporation engaged in such activities does not present a significant risk to the affected deposit insurance fund. Applica-

tions should be filed in accordance with § 303.141 of this chapter and will be processed under § 303.142(b) of this chapter. Approvals granted under § 303.142(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from significant risk, to prevent unsafe or unsound practices, and/or to ensure that the activity is consistent with the purposes of Federal deposit insurance and other applicable law.

(b) *Activities other than equity investments—(1) Prohibited activities.* An insured state savings association may not directly engage as principal in any activity, that is not an equity investment, of a type not permissible for a Federal savings association, and an insured state savings association shall not make nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of HOLA (12 U.S.C. 1464(c)(2)(B)), unless one of the exceptions in paragraph (b)(2) of this section applies. This section shall not be read to require the divestiture of any asset (including a nonresidential real estate loan), if the asset was acquired prior to August 9, 1989; however, any activity conducted with such asset must be conducted in accordance with this subpart. After August 9, 1989, an insured state savings association directly or through a subsidiary (other than, in the case of a mutual savings association, a subsidiary that is a qualified affiliate), may not acquire or retain any corporate debt securities not of investment grade.

(2) *Exceptions—(i) Consent obtained through application.* An insured state savings association that meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency may directly conduct activities prohibited by paragraph (b)(1) of this section if the savings association obtains the FDIC’s prior consent. Consent will be given only if the FDIC determines that conducting the activity designated poses no significant risk to the affected deposit insurance fund. Applications should be filed in accordance with § 303.141 of this chapter and will be processed under § 303.142(b) of this chapter. Approvals granted under § 303.142(b)

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of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from significant risk, to prevent unsafe or unsound practices, and/or to ensure that the activity is consistent with the purposes of Federal deposit insurance and other applicable law.

(ii) *Nonresidential realty loans permissible for a Federal savings association conducted in an amount not permissible.* An insured state savings association that meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency may make nonresidential real property loans in an amount exceeding the amount described in section 5(c)(2)(B) of HOLA, if the savings association files a notice in compliance with §303.141 of this chapter and the FDIC processes the notice without objection under §303.142(a) of this chapter. Consent will be given only if the FDIC determines that engaging in such lending in the amount designated poses no significant risk to the affected deposit insurance fund.

(iii) *Acquiring and retaining adjustable rate and money market preferred stock.* (A) An insured state savings association's investment of up to 15 percent of the association's tier one capital in adjustable rate preferred stock or money market (auction rate) preferred stock does not represent a significant risk to the deposit insurance funds. An insured state savings association may conduct this activity without first obtaining the FDIC's consent, provided that the association meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(B) An insured state savings association may acquire or retain other instruments of a type determined by the FDIC to have the character of debt securities and not to represent a significant risk to the deposit insurance funds. Such instruments shall be included in the 15 percent of tier one cap-

ital limit imposed in paragraph (b)(2)(iii)(A) of this section. An insured state savings association may conduct this activity without first obtaining the FDIC's consent, provided that the association meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(3) *Activities permissible for a Federal savings association conducted in an amount not permissible.* Except as provided in paragraph (b)(2)(ii) of this section, an insured state savings association may engage as principal in any activity, which is not an equity investment of a type permissible for a Federal savings association, in an amount in excess of that permissible for a Federal savings association, if the savings association meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency, the institution has advised the appropriate regional director (DOS) under the procedure in §303.142(c) of this chapter within thirty days before engaging in the activity, and the FDIC has not advised the insured state savings association that conducting the activity in the amount indicated poses a significant risk to the affected deposit insurance fund. This section shall not be read to require the divestiture of any asset if the asset was acquired prior to August 9, 1989; however, any activity conducted with such asset must be conducted in accordance with this subpart.

§362.12 Service corporations of insured State savings associations.

(a) *Prohibition.* A service corporation of an insured state savings association may not engage in any activity that is not permissible for a service corporation of a Federal savings association, unless it meets one of the exceptions in paragraph (b) of this section.

(b) *Exceptions*—(1) *Consent obtained through application.* A service corporation of an insured state savings association may conduct activities prohibited by paragraph (a) of this section if the savings association obtains the FDIC’s prior written consent and the insured state savings association meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency. Consent will be given only if the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund. Applications for consent should be filed in accordance with § 303.141 of this chapter and will be processed under § 303.142(b) of this chapter. Approvals granted under § 303.142(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of Federal deposit insurance and other applicable law.

(2) *Service corporations conducting unrestricted activities.* The FDIC has determined that the following activities do not represent a significant risk to the deposit insurance funds:

(i) A service corporation of an insured state savings association may acquire and retain equity securities of a company engaged in securities activities authorized in paragraph (b)(4) of this section if the bank complies with the following restrictions and files a notice in compliance with § 303.141 of this chapter and the FDIC processes the notice without objection under § 303.142(a) of this chapter. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activity if the facts and circumstances warrant such action. If changes to the management or business plan of the company at any time result in material changes to the nature of the company’s business or the manner in which its business is conducted, the insured state savings association shall advise the appropriate regional director (DOS) in writing within 10 business days after such change. Investment under this paragraph is authorized if:

(A) The service corporation controls the company;

(B) The savings association meets the core eligibility criteria of § 362.4(c)(1);

(C) The service corporation meets the core eligibility criteria of § 362.4(c)(2) (with references to the term “subsidiary” deemed to refer to the service corporation), or the company is a corporation meeting such criteria;

(D) The savings association’s transactions with the service corporation comply with the investment and transaction limits of paragraph (c) of this section, and the savings association’s transactions with the company comply with such limits as if it were a service corporation;

(E) The savings association complies with the capital requirements of paragraph (d) of this section with respect to the service corporation and the company; and

(F) The savings association and the company comply with the additional requirements of § 362.4(b)(5)(ii) (with references to the term “majority-owned subsidiary” deemed to refer to the company).

(ii) A service corporation of an insured state savings association may acquire and retain equity securities of a company engaged in the following activities, if the service corporation controls the company or the company is controlled by insured depository institutions, and the association continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The FDIC consents that such activity may be conducted by a service corporation of an insured state savings association without first obtaining the FDIC’s consent. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(A) *Equity securities of a company that engages in permissible activities.* A service corporation may own the equity securities of a company that engages in any activity permissible for a Federal savings association.

(B) *Equity securities of a company that acquires and retains adjustable-rate and money market preferred stock.* A service

corporation may own the equity securities of a company that engages in any activity permissible for an insured state savings association under § 362.11(b)(2)(iii) so long as instruments held under this paragraph (b)(2)(ii)(B), paragraph (b)(2)(iv) of this section, and § 362.11(b)(2)(iii) in the aggregate do not exceed the limit set by § 362.11(b)(2)(iii).

(C) *Equity securities of a company acting as an insurance agency.* A service corporation may own the equity securities of a company that acts as an insurance agency.

(iii) *Activities that are not conducted “as principal”.* A service corporation controlled by the insured state savings association may engage in activities which are not conducted “as principal” such as acting as an agent for a customer, acting in a brokerage, custodial, advisory, or administrative capacity, or acting as trustee, or in any substantially similar capacity.

(iv) *Acquiring and retaining adjustable-rate and money market preferred stock.* A service corporation may engage in any activity permissible for an insured state savings association under § 362.11(b)(2)(iii) so long as instruments held under this paragraph (b)(2)(iv), paragraph (b)(2)(ii)(B) of this section, and § 362.11(b)(2)(iii) in the aggregate do not exceed the limit set by § 362.11(b)(2)(iii).

(3) [Reserved]

(4) *Service corporations conducting securities underwriting.* The FDIC has determined that it does not represent a significant risk to the deposit insurance funds for a service corporation to engage in the public sale, distribution or underwriting of securities provided that the activity is conducted by a service corporation of an insured state savings association in compliance with the core eligibility requirements listed in § 362.4(c); any additional requirements listed in § 362.4(b)(5)(ii); the savings association complies with the investment and transaction limitations of paragraph (c) of this section; and the savings association meets the capital requirements of paragraph (d) of this section. The FDIC consents that these listed activities may be conducted by a service corporation of an insured state savings association if the savings association files a notice in compliance

with § 303.141 of this chapter and the FDIC processes the notice without objection under § 303.142(a) of this chapter. The FDIC is not precluded from taking any appropriate action or imposing additional requirements with respect to the activities if the facts and circumstances warrant such action. If changes to the management or business plan of the service corporation at any time result in material changes to the nature of the service corporation’s business or the manner in which its business is conducted, the insured state savings association shall advise the appropriate regional director (DOS) in writing within 10 business days after such change. For purposes of applying § 362.4 (b)(5)(ii) and (c) to this paragraph (b)(4), references to the terms “subsidiary” and “majority-owned subsidiary” in §§ 362.4(b)(5)(ii) and (c) shall be deemed to refer to the service corporation. For the purposes of applying § 362.4(c), references to the term “eligible subsidiary” in § 362.4(c) shall be deemed to refer to the eligible service corporation.

(c) *Investment and transaction limits.* The restrictions detailed in § 362.4(d) apply to transactions between an insured state savings association and any service corporation engaging in activities which are not permissible for a service corporation of a Federal savings association if specifically required by this part or FDIC order. For purposes of applying the investment limits in § 362.4(d)(2), the term “investment” includes only those items described in § 362.4(d)(2)(ii)(A) (3) and (4). For purposes of applying § 362.4(d) (2), (3), and (4) to this paragraph (c), references to the terms “insured State bank” and “subsidiary” in § 362.4(d)(2), (3), and (4), shall be deemed to refer, respectively, to the insured state savings association and the service corporation. For purposes of applying § 362.4(d)(5), references to the terms “insured State bank” and “subsidiary” in § 362.4(d)(5) shall be deemed to refer, respectively, to the insured state savings association and the service corporations or subsidiaries.

(d) *Capital requirements.* If specifically required by this part or by FDIC order, an insured state savings association

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that wishes to conduct as principal activities through a service corporation which are not permissible for a service corporation of a Federal savings association must:

(1) Be well-capitalized after deducting from its capital any investment in the service corporation, both equity and debt.

(2) Use such regulatory capital amount for the purposes of the insured state savings association's assessment risk classification under part 327 of this chapter.

§ 362.13 Approvals previously granted.

FDIC consent by order or notice. An insured state savings association that previously filed an application and obtained the FDIC's consent to engage in an activity or to acquire or retain an investment in a service corporation engaging as principal in an activity or acquiring and retaining any investment that is prohibited under this subpart may continue that activity or retain that investment without seeking the FDIC's consent, provided the insured state savings association and the service corporation, if applicable, continue to meet the conditions and restrictions of approval. An insured state savings association which was granted approval based on conditions which differ from the requirements of §§ 362.4(c)(2) and 362.12 (c) and (d) will be considered to meet the conditions and restrictions of the approval if the insured state savings association and any applicable service corporation meet the requirements of §§ 362.4(c)(2) and 362.12 (c) and (d). For the purposes of applying § 362.4(c)(2), references to the terms "eligible subsidiary" and "subsidiary" in § 362.4(c)(2) shall be deemed to refer, respectively, to the eligible service corporation and the service corporation.

Subpart D—Acquiring, Establishing, or Conducting New Activities Through a Subsidiary by an Insured Savings Association

§ 362.14 Purpose and scope.

This subpart implements section 18(m) of the Federal Deposit Insurance Act (12 U.S.C. 1828(m)) which requires

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that prior notice be given the FDIC when an insured savings association establishes or acquires a subsidiary or engages in any new activity in a subsidiary. For the purposes of this subpart, the term "subsidiary" does not include any insured depository institution as that term is defined in the Federal Deposit Insurance Act. Unless otherwise indicated, the definitions provided in § 362.2 apply to this subpart.

§ 362.15 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

No state or Federal insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, unless it files a notice in compliance with § 303.142(c) of this chapter at least 30 days prior to establishment of the subsidiary or commencement of the activity and the FDIC does not object to the notice. This requirement does not apply to any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law or any savings association that acquired its principal assets from such an institution.

Subpart E—Financial Subsidiary Activities of Insured State Nonmember Banks

SOURCE: 65 FR 15530, Mar. 23, 2000, unless otherwise noted.

§ 362.16 Purpose and scope.

(a) This subpart, along with the notice procedures in subpart G of part 303 of this chapter apply to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. This subpart implements section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) and requires that notices be filed with the FDIC before subsidiaries of insured state nonmember banks conduct financial subsidiary activities. The phrase "financial subsidiary activity" means an activity which has been authorized for a financial subsidiary of a national bank under section 5136A of the Revised Statutes (12 U.S.C. 24 A) and which may be conducted by a national bank only through a financial subsidiary.

Under this subpart, the FDIC may impose standards and prudential safeguards when subsidiaries of insured state nonmember banks engage in financial subsidiary activities. This subpart also implements the statutory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement applicable to these financial subsidiary activities.

(b) This subpart does not cover activities conducted other than “as principal”, defined for purposes of this subpart as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services.

(c) The FDIC intends to allow insured state nonmember bank subsidiaries to undertake only safe and sound activities and investments that would not present a significant risk to the deposit insurance fund and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state nonmember bank subsidiary to conduct activities that are not authorized or that are prohibited by either state or federal law.

§ 362.17 Definitions.

For the purposes of this subpart, the following definitions will apply:

(a) *Activity, company, control, insured depository institution, insured state bank, insured state nonmember bank, and subsidiary* have the same meaning as provided in subpart A of this part.

(b) *Affiliate* has the same meaning contained in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

§ 362.18 Restrictions on financial subsidiary activities of insured state nonmember bank subsidiaries.

(a) *Financial subsidiary activities.* The FDIC Board of Directors has found that depending on the facts and circumstances of a particular case, the conduct of a financial subsidiary activ-

ity as principal in a subsidiary of an insured state nonmember bank may have adverse effects on the safety and soundness of the insured state nonmember bank. The FDIC Board of Directors has found that the FDIC cannot make a determination whether there are adverse effects on the safety and soundness of an insured state nonmember bank engaging in such activities through a subsidiary and whether additional prudential safeguards are necessary, unless the FDIC has had an opportunity for prior review of the activities. Therefore, an insured state nonmember bank may not establish, acquire or hold a subsidiary that engages in financial subsidiary activities as principal or commence any such new activity pursuant to section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) unless:

(1) The insured state nonmember bank submits a notice under § 303.121 of this chapter and the FDIC processes the notice without objection under § 303.122(a) of this chapter. Consent only will be given if the FDIC determines the activity poses no adverse effects on the safety and soundness of the insured state nonmember bank. Approvals granted under § 303.122(a) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, prevent unsafe or unsound banking practices, and/or ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(2) The insured state nonmember bank and the subsidiary comply with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1), as if the subsidiary were a financial subsidiary within the meaning of section 23A(e)(1).

(3) All insured depository institution affiliates of the insured state nonmember bank are well-capitalized as defined in the appropriate capital regulation and guidance of each institution’s primary federal regulator, and the insured state nonmember bank complies with the capital deduction requirement in accordance with § 362.4(e)(1) through (3), discloses that

capital separation in any published financial statements and does not consolidate the subsidiary's assets and liabilities with those of the insured state bank in any published financial statements.

(4) The insured state nonmember bank and the subsidiary meet the financial and operational safeguards applicable to a financial subsidiary of a national bank conducting the same activities as provided in section 5136A(d) of the Revised Statutes of the United States (12 U.S.C. 24A(d)).

(b) *Time of compliance.* Any insured state nonmember bank that files a notice under paragraph (a) of this section to which the FDIC does not object must, at the time of the filing of such notice and as long as the insured state nonmember bank's subsidiary is engaged in the financial subsidiary activity, comply with the requirements of paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(c) *Community Reinvestment Act (CRA).* An insured state nonmember bank may not commence any new financial subsidiary activity through a subsidiary as principal or directly or indirectly establish or acquire control of a company engaged in any such activity pursuant to paragraph (a) of this section, if the bank or any of its insured depository institution affiliates received a CRA rating of less than "satisfactory record of meeting community credit needs" on its most recent CRA examination prior to when the bank files a notice under this section.

(d) *Coordination with section 24 of the Federal Deposit Insurance Act.* (1) *Grandfathered subsidiaries.* Notwithstanding paragraphs (a) through (c) of this section, an insured state bank may retain its interest in any subsidiary that:

(i) Was conducting the financial subsidiary activity as principal before November 12, 1999;

(ii) With authorization in accordance with section 24 of the Federal Deposit Insurance Act (12 USC 1831a) and its implementing regulation found in subpart A of this part 362; and

(iii) Which continues to meet the conditions and restrictions of the part 362 order or regulation approving the activity as well as other applicable law.

(2) *New financial subsidiary activities.* Notwithstanding subpart A of this part 362 or §337.4 of this chapter, an insured state bank may not, on or after November 12, 1999, establish, acquire or hold a subsidiary that engages in financial subsidiary activities as principal or commence any such new activity other than as provided in this section.

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

Sec.

363.0 OMB control number.

363.1 Scope.

363.2 Annual reporting requirements.

363.3 Independent public accountant.

363.4 Filing and notice requirements.

363.5 Audit committees.

APPENDIX A TO PART 363—GUIDELINES AND INTERPRETATIONS

AUTHORITY: 12 U.S.C. 1831m.

SOURCE: 58 FR 31335, June 2, 1993, unless otherwise noted.

§ 363.0 OMB control number.

The collecting of information requirements in this part have been approved by the Office of Management and Budget under OMB control number 3064-0113.

§ 363.1 Scope.

(a) *Applicability.* This part applies with respect to fiscal years of insured depository institutions which begin after December 31, 1992. This part does not apply with respect to any fiscal year of any insured depository institution, the total assets of which, at the beginning of such fiscal year, are less than \$500 million.

(b) *Compliance by subsidiaries of holding companies.* (1) The audited financial statements requirement of §363.2(a) may be satisfied for an insured depository institution that is a subsidiary of a holding company by audited financial statements of the consolidated holding company.

(2) The other requirements of this part for an insured depository institution that is a subsidiary of a holding company may be satisfied by the holding company if:

(i) The services and functions comparable to those required of the insured