

§ 362.16 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter, implements section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) and requires that an insured state nonmember bank certify certain facts and file a notice with the FDIC before the insured state nonmember bank may control or hold an interest in a financial subsidiary under section 46(a) of the Federal Deposit Insurance Act. This subpart also implements the statutory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement set forth in subsection (4)(1)(2) of the Bank Holding Company Act (12 U.S.C. 1843(1)(2)), which is applicable to state nonmember banks that commence new activities through a financial subsidiary or directly or indirectly acquire control of a company engaged in an activity under section 46(a).

(b) This subpart does not cover activities conducted other than “as principal”. For purposes of this subpart, activities conducted other than “as principal” are defined 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.

§ 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 provided in subpart B of this part.

(c) *Financial subsidiary* means any company that is controlled by one or more insured depository institutions other than:

(1) A subsidiary that only engages in activities that the state nonmember bank is permitted to engage in directly

and that are conducted on the same terms and conditions that govern the conduct of the activities by the state nonmember bank; or

(2) A subsidiary that the state nonmember bank is specifically authorized to control by the express terms of a federal statute (other than section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w)), and not by implication or interpretation, such as the Bank Service Company Act (12 U.S.C. 1861 *et seq.*).

(d) *Tangible equity and Tier 2 capital* have the same meaning as set forth in part 325 of this chapter.

(e) *Well-managed* means:

(1) Unless otherwise determined in writing by the appropriate federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent state or federal examination or subsequent review of the depository institution and at least a rating of 2 for management, if such a rating is given; or

(2) In the case of any depository institution that has not been examined by its appropriate federal banking agency, the existence and use of managerial resources that the appropriate federal banking agency determines are satisfactory.

§ 362.18 Financial subsidiaries of insured state nonmember banks.

(a) *“As principal” activities.* An insured state nonmember bank may not obtain control of or hold an interest in a financial subsidiary that engages in 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 the insured state nonmember bank files a notice containing the information required in § 303.121(b) of this chapter and certifies that:

(1) The insured state nonmember bank is well-managed;

(2) The insured state nonmember bank and all of its insured depository