

## Federal Reserve System

## § 208.75

member bank shall be deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 et seq.).

### § 208.74 What happens if the state member bank fails to continue to meet certain requirements?

(a) *Qualifications and safeguards.* The following procedures apply to a state member bank that controls or holds an interest in a financial subsidiary.

(1) *Notice by Board.* If the Board finds that a state member bank or any of its depository institution affiliates fails to continue to be well capitalized and well managed or comply with the asset limitation set forth in § 208.71(a)(2) or the safeguards set forth in § 208.73(b), the Board will notify the state member bank in writing and identify the areas of noncompliance.

(2) *Notification by state member bank.* A state member bank must promptly notify the Board if the bank becomes aware that any depository institution affiliate of the bank has ceased to be well capitalized and well managed.

(3) *Execution of agreement.* Within 45 days after receiving a notice under paragraph (a)(1) of this section, or such additional period of time as the Board may permit, the:

(i) State member bank must execute an agreement acceptable to the Board to comply with all applicable capital, management, asset and safeguard requirements; and

(ii) Any relevant depository institution affiliate of the state member bank must execute an agreement acceptable to its appropriate Federal banking agency to comply with all applicable capital and management requirements.

(4) *Imposition of limits.* Until the Board determines that the conditions described in the notice under paragraph (a)(1) of this section are corrected:

(i) The Board may impose any limitations on the conduct or activities of the state member bank or any subsidiary of the bank as the Board determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-

Leach-Bliley Act (12 U.S.C. 24a, 335, 371c, and 1971), including requiring the Board's prior approval for any financial subsidiary of the bank to acquire any company or engage in any additional activity; and

(ii) The appropriate Federal banking agency for any relevant depository institution affiliate may impose any limitations on the conduct or activities of the depository institution or any subsidiary of that institution as the agency determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act (12 U.S.C. 24a, 335, 371c, and 1971).

(5) *Divestiture.* The Board may require a state member bank to divest control of any financial subsidiary if the conditions described in a notice under paragraph (a)(1) of this section are not corrected within 180 days of receipt of the notice or such additional period of time as the Board may permit. Any divestiture must be completed in accordance with any terms and conditions established by the Board.

(6) *Consultation.* The Board will consult with all relevant Federal and state regulatory authorities in taking any action under this subsection.

(b) *Debt rating or alternative requirement.* If a state member bank does not continue to meet any applicable debt rating or alternative requirement of § 208.71(b), the bank may not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank restores its compliance with the requirements of that section. For purposes of this paragraph, the term "equity capital" includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation or interpretation applicable to the subsidiary.

### § 208.75 What happens if the state member bank or any of its insured depository institution affiliates has received less than a "satisfactory" CRA rating?

(a) *Limits on establishment of financial subsidiaries and expansion of existing financial subsidiaries.* If a state member bank, or any of its insured depository