

## § 225.81

## 12 CFR Ch. II (1-1-01 Edition)

the Board within 15 days of the effective date of the notice of disapproval. An appeal shall be in writing and explain the reasons for the appeal and include all facts, documents, and arguments that the appealing party wishes to be considered in the appeal, and state whether the appealing party is requesting an informal hearing.

(2) Written notice of the final decision of the Board shall be sent to the appealing party within 60 days of the receipt of an appeal, unless the appealing party's request for an informal hearing is granted.

(3) The disapproved individual may not serve as a director or senior executive officer of the state member bank or bank holding company while the appeal is pending.

(e) *Informal hearing.* (1) An individual or regulated institution whose notice under this section has been disapproved may request an informal hearing on the notice. A request for an informal hearing shall be in writing and shall be submitted within 15 days of a notice of disapproval. The Board may, in its sole discretion, order an informal hearing if the Board finds that oral argument is appropriate or necessary to resolve disputes regarding material issues of fact.

(2) An informal hearing shall be held within 30 days of a request, if granted, unless the requesting party agrees to a later date.

(3) Written notice of the final decision of the Board shall be given to the individual and the regulated institution within 60 days of the conclusion of any informal hearing ordered by the Board, unless the requesting party agrees to a later date.

(f) *Waiver of notice*—(1) *Waiver requests.* The Board or Reserve Bank may permit an individual to serve as a senior executive officer or director before the notice required under this subpart is provided, if the Board or Reserve Bank finds that:

(i) Delay would threaten the safety or soundness of the regulated institution or a bank controlled by a bank holding company;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* An individual may serve as a director upon election to the board of directors of a regulated institution before the notice required under this subpart is provided if the individual:

(i) Is not proposed by the management of the regulated institution;

(ii) Is elected as a new member of the board of directors at a meeting of the regulated institution; and

(iii) Provides to the appropriate Reserve Bank all the information required in § 225.73(a) within two (2) business days after the individual's election.

(3) *Effect on disapproval authority.* A waiver shall not affect the authority of the Board or Reserve Bank to disapprove a notice within 30 days after a waiver is granted under paragraph (f)(1) of this section or the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (f)(2) of this section.

### Subpart I—Financial Holding Companies

SOURCE: Reg. Y, 65 FR 3791, Jan. 25, 2000, unless otherwise noted.

#### § 225.81 What is a financial holding company?

(a) *Definition.* A financial holding company is a bank holding company that meets the requirements of this section.

(b) *Requirements to be a financial holding company.* In order to be a financial holding company:

(1) All depository institutions controlled by the bank holding company must be and remain well capitalized;

(2) All depository institutions controlled by the bank holding company must be and remain well managed; and

(3) The bank holding company must have made an effective election to become a financial holding company.

(c) *Well managed*—(1) *In general.* For purposes of this subpart, a depository institution is well managed if:

(i) At its most recent inspection or examination or subsequent review by the appropriate Federal banking agency for the depository institution, the institution received:

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(A) At least a satisfactory composite rating; and

(B) At least a satisfactory rating for management; or

(ii) In the case of a depository institution that has not received an examination rating, the Board has determined, after a review of managerial and other resources of the depository institution and after consulting the appropriate Federal banking agency for the institution, that the institution is well managed.

(2) *Merged institutions.* A depository institution that results from the merger of two or more depository institutions that are well managed shall be considered to be well managed unless the Board determines otherwise after consulting with the appropriate Federal banking agency for each depository institution involved in the merger.

(d) *Requirements for foreign banks that are or are owned by bank holding companies—*(1) *Foreign banks with U.S. branches or agencies.* A foreign bank that is a bank holding company and that operates a branch or agency or owns or controls a commercial lending company in the United States must comply with the requirements of this section, § 225.82 and §§ 225.90 through 225.93 in order to be a financial holding company.

(2) *Bank holding companies that own foreign banks with U.S. branches or agencies.* A bank holding company that owns a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States must comply with the requirements of this section and § 225.82, and the foreign bank must comply with §§ 225.90 through 225.93 in order for the company to be a financial holding company.

Reg. Y, 65 FR 3791, Jan. 25, 2000, as amended at 65 FR 15055, Mar. 21, 2000]

### **§ 225.82 How does a company elect to become a financial holding company?**

(a) *Filing requirement.* A bank holding company may elect to become a financial holding company by filing a written declaration with the appropriate Federal Reserve Bank.

(b) *Contents of declaration.* The declaration must:

(1) State that the bank holding company elects to be a financial holding company;

(2) Provide the name and head office address of the company and of each depository institution controlled by the company;

(3) Certify that all depository institutions controlled by the company are well capitalized as of the date the company files its election;

(4) Provide the capital ratios for all relevant capital measures (as defined in section 38 of the Federal Deposit Insurance Act) as of the close of the previous quarter for each depository institution controlled by the company on the date the company files its election; and

(5) Certify that all depository institutions controlled by the company are well managed as of the date the company files its election.

(c) *Under what circumstances will the Board find an election to be ineffective?* An election to become a financial holding company shall not be effective if, during the period provided in paragraph (f) of this section, the Board finds that as of the date the election is received by the appropriate Federal Reserve Bank:

(1) Any insured depository institution controlled by the bank holding company (except an institution excluded under paragraph (e) of this section) has not achieved at least a rating of “satisfactory record of meeting community credit needs” under the Community Reinvestment Act at the institution’s most recent examination; or

(2) Any depository institution controlled by the bank holding company is not both well capitalized and well managed.

(d) *May the Board impose supervisory limits on financial holding companies?* The Board may, in the exercise of its supervisory authority, restrict or limit the commencement or conduct of additional activities or acquisitions of a financial holding company, or take other appropriate action, if the Board finds that the financial holding company does not have the financial resources, including capital resources, or managerial resources to engage in activities, make acquisitions, or retain ownership