

## Federal Reserve System

## § 225.82

(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

of companies permitted for financial holding companies.

(e) *How is CRA performance of recently acquired insured depository institutions considered?* An insured depository institution will be excluded for purposes of the review of CRA ratings described in paragraph (c)(1) of this section if:

(1) The bank holding company acquired the insured depository institution during the 12-month period preceding the filing of an election under paragraph (a) of this section;

(2) The bank holding company has submitted an affirmative plan to the appropriate Federal banking agency for the institution to take actions necessary for the institution to achieve at least a rating of “satisfactory record of meeting community credit needs” under the Community Reinvestment Act at the next examination of the institution; and

(3) The appropriate Federal banking agency for the institution has accepted that plan.

(f) *When is an election effective?* (1) *In general.* An election described in paragraph (a) of this section is effective on the 31st day after the date that the election was received by the appropriate Federal Reserve Bank, unless the Board notifies the bank holding company prior to that time that the election is ineffective.

(2) *Earlier notification that an election is effective.* The Board or the appropriate Federal Reserve Bank may notify a bank holding company that its election to become a financial holding company is effective prior to the 31st day after the election was filed with the appropriate Federal Reserve Bank. Such a notification must be in writing.

**§ 225.83 What are the consequences of failing to continue to meet applicable capital and management requirements?**

(a) *Notice by the Board.* If the Board finds that any depository institution controlled by a financial holding company ceases to be well capitalized or well managed, the Board will notify the company in writing that it is not in compliance with the applicable requirement(s) for a financial holding company and identify the areas of non-compliance.

(b) *Notification by a financial holding company required.* Promptly upon becoming aware that any depository institution controlled by the financial holding company has ceased to be well capitalized or well managed, the company must notify the Board and identify the depository institution involved and the area of noncompliance.

(c) *Execution of agreement acceptable to the Board—(1) Agreement required; time period.* Within 45 days after receiving a notice under paragraph (a) of this section, the company must execute an agreement acceptable to the Board to comply with all applicable capital and management requirements.

(2) *Extension of time for executing agreement.* Upon request by a company, the Board may extend the 45-day period under paragraph (c)(1) of this section if the Board determines that granting additional time is appropriate under the circumstances. A request by a company for additional time must include an explanation of why an extension is necessary.

(3) *Agreement requirements.* An agreement required by paragraph (c)(1) of this section to correct a capital or management deficiency must:

(i) Explain the specific actions that the company will take to correct all areas of noncompliance;

(ii) Provide a schedule within which each action will be taken;

(iii) Provide any other information that the Board may require; and

(iv) Be acceptable to the Board.

(d) *Limitations during period of non-compliance.* Until the Board determines that a company has corrected the conditions described in a notice under paragraph (a) of this section:

(1) The Board may impose any limitations or conditions on the conduct or activities of the company or any of its affiliates as the Board finds to be appropriate and consistent with the purposes of the Bank Holding Company Act; and

(2) The company and its affiliates may not engage in any additional activity or acquire control or shares of any company under section 4(k) of the Bank Holding Company Act without prior approval from the Board.