

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.

(e) *Consequences of failure to correct conditions within 180 days*—(1) *Divestiture of depository institutions.* If a company does not correct the conditions described in a notice under paragraph (a) of this section within 180 days of receipt of the notice or such additional time as the Board may permit, the Board may order the company to divest ownership or control of any depository institution owned or controlled by the company. Such divestiture must be done in accordance with the terms and conditions established by the Board.

(2) *Alternative method of complying with a divestiture order.* A company may comply with an order issued under paragraph (e)(1) of this section by ceasing to engage (both directly and through any subsidiary that is not a depository institution or a subsidiary of a depository institution) in all activities that are not permissible for a bank holding company to conduct under section 4(c)(8) of the Bank Holding Company Act. The termination of activities must be done within the time period referred to in paragraph (e)(1) of this section and subject to terms and conditions acceptable to the Board.

(f) *Consultation with other agencies.* In taking any action under this section, the Board will consult with the relevant Federal and state regulatory authorities.

**§ 225.84 What are the consequences of failing to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured depository institution subsidiaries?**

(a) *Limitations on activities*—(1) *In general.* Upon receiving a notice regarding performance under the Community Reinvestment Act in accordance with paragraph (a)(2) of this section, a financial holding company may not:

(i) Commence any additional activity under subsection 4(k) or 4(n) of the Bank Holding Company Act; or

(ii) Directly or indirectly acquire control of a company engaged in any activity under subsections 4(k) or 4(n) of the Bank Holding Company Act.

(2) *Notification.* A financial holding company receives notice for purposes of this paragraph at the time that the appropriate Federal banking agency for any insured depository institution controlled by the company or the

Board provides notice to the institution or company that the institution has received a rating of “needs to improve record of meeting community credit needs” or “substantial non-compliance in meeting community credit needs” in the institution’s most recent examination under the Community Reinvestment Act.

(b) *Exception for certain activities*—(1) *Continuation of investment activities.* The prohibition in paragraph (a) of this section does not prevent a financial holding company from continuing to make investments in the ordinary course of conducting investment activities under section 4(k)(4)(H) or insurance company investment activities under section 4(k)(4)(I) of the Bank Holding Company Act if:

(i) The financial holding company lawfully was a financial holding company and commenced the investment activity under section 4(k)(4)(H) or the insurance company investment activities under section 4(k)(4)(I) prior to the time that an insured depository institution controlled by the financial holding company received a rating below “satisfactory record of meeting community credit needs” under the Community Reinvestment Act; and (ii) The Board has not, in the exercise of its supervisory authority, advised the financial holding company that these activities must be restricted.

(2) *Activities that are closely related to banking.* The prohibition in paragraph (a) of this section does not prevent a financial holding company from commencing any additional activity or acquiring control of a company engaged in any activity under section 4(c) of the Bank Holding Company Act, if the company complies with the notice, approval, and other requirements under that section and section 4(j).

(c) *Duration of prohibitions.* The prohibitions described in paragraph (a) of this section shall continue in effect until such time as each insured depository institution controlled by the financial holding company has achieved at least a rating of “satisfactory record of meeting community credit needs” under the Community Reinvestment Act at the most recent examination of the institution.