

§ 225.89 How to request approval to engage in an activity that is complementary to a financial activity?

(a) *Prior Board approval is required.* A financial holding company that seeks to engage in or acquire a company engaged in an activity that the financial holding company believes is complementary to a financial activity must obtain prior approval from the Board in accordance with section 4(j) of the Bank Holding Company Act (12 U.S.C. 1843 (j)). The notice must be in writing and must:

(1) Identify and define the proposed complementary activity, specifically describing what the activity would involve and how the activity would be conducted;

(2) Identify the financial activity for which the proposed activity would be complementary and provide information sufficient to support a finding that the proposed activity should be considered complementary to the identified financial activity;

(3) Describe the scope and relative size of the proposed activity, as measured by the percentage of the projected financial holding company revenues expected to be derived from and assets associated with conducting the activity;

(4) Discuss the risks that conducting the activity may reasonably be expected to pose to the safety and soundness of the subsidiary depository institutions of the financial holding company and to the financial system generally;

(5) Describe the potential adverse effects, including potential conflicts of interest, decreased or unfair competition, or other risks, that conducting the activity could raise, and explain the measures the financial holding company proposes to take to address those potential effects; and

(6) Provide any information about the financial and managerial resources of the financial holding company and any other information requested by the Board.

(b) *What standards will the Board apply in evaluating the notice?* In evaluating a notice to engage in a complementary activity, the Board must consider whether:

(1) The proposed activity is complementary to a financial activity;

(2) The proposed activity would pose a substantial risk to the safety or soundness of depository institutions or the financial system generally; and

(3) The proposal meets the standards in section 4(j)(2) of the Bank Holding Company Act (12 U.S.C. 1843(j)(2)).

(c) *How and when will the Board act on a notice?* The Board will inform the financial holding company in writing of the Board's determination regarding the proposed activity within the period described in section 4(j) of the Bank Holding Company Act (12 U.S.C. 1843(j)).

[Reg. Y, 65 FR 14440, Mar. 17, 2000]

§ 225.90 What are the requirements for a foreign bank to be treated as a financial holding company?

(a) *Foreign banks as financial holding companies.* A foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, and any company that owns or controls such a foreign bank, will be treated as a financial holding company if:

(1) The foreign bank, and any U.S. depository institution that is owned or controlled by the foreign bank or company, is and remains well capitalized and well managed; and

(2) The foreign bank, or the company that owns the foreign bank, has made an effective election to be treated as a financial holding company under this subpart.

(b) *Standards for "well capitalized."* A foreign bank will be considered "well capitalized" if either:

(1)(i) Its home country supervisor, as defined in §211.21 of the Board's Regulation K (12 CFR 211.21), has adopted risk-based capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision (Basel Accord);

(ii) The foreign bank maintains a Tier 1 capital to total risk-based assets ratio of 6 percent and a total capital to total risk-based assets ratio of 10 percent, as calculated under its home country standard;

(iii) The foreign bank maintains a Tier 1 capital to total assets leverage ratio of at least 3 percent; and

(iv) The foreign bank's capital is comparable to the capital required for

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a U.S. bank owned by a financial holding company; or

(2) The foreign bank has obtained a determination from the Board under § 225.91(c) that the foreign bank's capital is otherwise comparable to the capital that would be required of a U.S. bank owned by a financial holding company.

(c) *Standards for "well managed."* A foreign bank will be considered "well managed" if:

(1) Each of the U.S. branches, agencies, and commercial lending subsidiaries of the foreign bank has received at least a satisfactory composite rating at its most recent assessment;

(2) The home country supervisor of the foreign bank considers the overall operations of the foreign bank to be satisfactory or better; and

(3) The management of the foreign bank meets standards comparable to those required of a U.S. bank owned by a financial holding company.

[Reg. Y, 65 FR 15055, Mar. 21, 2000]

§ 225.91 How may a foreign bank elect to be treated as a financial holding company?

(a) *Filing requirement.* A foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, or a company that owns or controls such a foreign bank, may elect to be treated as a financial holding company by filing a written declaration with the appropriate Reserve Bank.

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

(1) State that the foreign bank or the company elects to be treated as a financial holding company;

(2) Provide the risk-based and leverage capital ratios of the foreign bank as of the close of the most recent quarter and as of the close of the most recent audited reporting period;

(3) Certify that the foreign bank meets the standards of well capitalized set out in § 225.90(b)(1)(i), (ii) and (iii) or § 225.90(b)(2) as of the date the foreign bank or company files its election;

(4) Certify that the foreign bank is well managed as defined in § 225.90(c)(1) as of the date the foreign bank or company files its election;

(5) Certify that all U.S. depository institutions controlled by the foreign bank or company are well capitalized and well managed as of the date the foreign bank or company files its election; and

(6) 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 U.S. depository institution controlled by the foreign bank or company.

(c) *Pre-clearance process.* Before filing an election to be treated as a financial holding company, a foreign bank or company may file a request for review of its qualifications to be treated as a financial holding company. The Board will endeavor to make a determination on such requests within 30 days of receipt. A foreign bank chartered in a country where no other bank from that country has been reviewed by the Board for comprehensive consolidated supervision under the Bank Holding Company Act or the International Banking Act is encouraged to use this process.

[Reg. Y, 65 FR 15056, Mar. 21, 2000]

§ 225.92 How does an election by a foreign bank become effective?

(a) *In general.* An election described in § 225.91 is effective on the 31st day after the date that an election was received by the appropriate Federal Reserve Bank, unless the Board notifies the foreign bank or company prior to that time that:

(1) The election is ineffective; or

(2) The period is extended with the consent of the foreign bank or company making the election.

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

(c) *Under what circumstances will the Board find an election to be ineffective?* An election to be treated as financial holding company shall not be effective