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(i) Assigned the bank a rating of 1 or 2 for management as part of the bank's rating under the Uniform Financial Institutions Rating System (commonly referred to as CAMELS); and

(ii) Assigned the bank a composite CAMELS rating of 1 or 2 under the Uniform Financial Institutions Rating System;

(4) The bank currently is not subject to a formal enforcement proceeding or order by the Federal Reserve or the FDIC; and

(5) No person acquired control of the bank during the preceding 12-month period in which a full-scope examination would have been required but for this paragraph (b).

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the Federal Reserve to examine any member bank as frequently as the agency deems necessary.

[63 FR 37655, July 13, 1998, as amended at 72 FR 17802, Apr. 10, 2007]

Subpart G—Financial Subsidiaries of State Member Banks

SOURCE: Reg. H, 66 FR 42933, Aug. 16, 2001, unless otherwise noted.

§ 208.71 What are the requirements to invest in or control a financial subsidiary?

(a) *In general.* A state member bank may control, or hold an interest in, a financial subsidiary only if:

(1) The state member bank and each depository institution affiliate of the state member bank are well capitalized and well managed;

(2) The aggregate consolidated total assets of all financial subsidiaries of the state member bank do not exceed the lesser of:

(i) 45 percent of the consolidated total assets of the parent bank; or

(ii) \$50 billion, which dollar amount shall be adjusted according to an indexing mechanism jointly established by the Board and the Secretary of the Treasury;

(3) The state member bank, if it is one of the largest 100 insured banks (based on consolidated total assets as of the end of the previous calendar year), meets the debt rating or alter-

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native requirement of paragraph (b) of this section, if applicable; and

(4) The Board or the appropriate Reserve Bank has approved the bank to acquire the interest in or control the financial subsidiary under § 208.76.

(b) *Debt rating or alternative requirement for 100 largest insured banks—(1) General.* A state member bank meets the debt rating or alternative requirement of this paragraph (b) if:

(i) The bank has at least one issue of eligible debt outstanding that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization; or

(ii) If the bank is one of the second 50 largest insured banks (based on consolidated total assets as of the end of the previous calendar year), the bank has a current long-term issuer credit rating from at least one nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.

(2) *Financial subsidiaries engaged in financial activities only as agent.* This paragraph (b) does not apply to a state member bank if the financial subsidiaries of the bank engage in financial activities described in § 208.72(a)(1) and (2) only in an agency capacity and not directly or indirectly as principal.

§ 208.72 What activities may a financial subsidiary conduct?

(a) *Authorized activities.* A financial subsidiary of a state member bank may engage in only the following activities:

(1) Any financial activity listed in § 225.86(a), (b), or (c) of the Board's Regulation Y (12 CFR 225.86(a), (b), or (c));

(2) Any activity that the Secretary of the Treasury, in consultation with the Board, has determined to be financial in nature or incidental to a financial activity and permissible for a financial subsidiary pursuant to Section 5136A(b) of the Revised Statutes of the United States (12 U.S.C. 24a(b)); and

(3) Any activity that the state member bank is permitted to engage in directly (subject to the same terms and conditions that govern the conduct of the activity by the state member bank).

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(b) *Impermissible activities.* Notwithstanding paragraph (a) of this section, a financial subsidiary may not engage as principal in the following activities:

(1) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death (except to the extent permitted under applicable state law and section 302 or 303(c) of the Gramm-Leach-Bliley Act (15 U.S.C. 6712 or 6713(c));

(2) Providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986 (26 U.S.C. 72);

(3) Real estate development or real estate investment, unless otherwise expressly authorized by applicable state and Federal law; and

(4) Any merchant banking or insurance company investment activity permitted for financial holding companies by section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

§ 208.73 What additional provisions are applicable to state member banks with financial subsidiaries?

(a) *Capital deduction required.* A state member bank that controls or holds an interest in a financial subsidiary must comply with the following rules in determining its compliance with applicable regulatory capital standards (including the well capitalized standard of § 208.71(a)(1)):

(1) The bank must not consolidate the assets and liabilities of any financial subsidiary with those of the bank.

(2) For purposes of determining the bank's risk-based capital ratios under Appendix A of this part, the bank must—

(i) Deduct 50 percent of the aggregate amount of its outstanding equity investment (including retained earnings) in all financial subsidiaries from both the bank's Tier 1 capital and Tier 2 capital; and

(ii) Deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's risk-weighted assets.

(3) For purposes of determining the bank's leverage capital ratio under Appendix B of this part, the bank must—

(i) Deduct 50 percent of the aggregate amount of its outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's Tier 1 capital; and

(ii) Deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's average total assets.

(4) For purposes of determining the bank's ratio of tangible equity to total assets under § 208.43(b)(5), the bank must deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's tangible equity and total assets.

(5) If the deduction from Tier 2 capital required by paragraph (a)(2)(i) of this section exceeds the bank's Tier 2 capital, any excess must be deducted from the bank's Tier 1 capital.

(b) *Financial statement disclosure of capital deduction.* Any published financial statement of a state member bank that controls or holds an interest in a financial subsidiary must, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank reflecting the capital deduction and adjustments required by paragraph (a) of this section.

(c) *Safeguards for the bank.* A state member bank that establishes, controls or holds an interest in a financial subsidiary must:

(1) Establish and maintain procedures for identifying and managing financial and operational risks within the state member bank and the financial subsidiary that adequately protect the state member bank from such risks; and

(2) Establish and maintain reasonable policies and procedures to preserve the separate corporate identity and limited liability of the state member bank and the financial subsidiary.

(d) *Application of Sections 23A and 23B of the Federal Reserve Act.* For purposes of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1):

(1) A financial subsidiary of a state member bank shall be deemed an affiliate, and not a subsidiary, of the bank;