

## Federal Deposit Insurance Corporation

## § 362.11

(c) The FDIC intends to allow insured state savings associations and their service corporations to undertake only safe and sound activities and investments that do not present significant risks to the Deposit Insurance Fund and that are consistent with the purposes of Federal deposit insurance and other applicable law. This subpart does not authorize any insured state savings association to make investments or conduct activities that are not authorized or that are prohibited by either Federal or state law.

[63 FR 66326, Dec. 1, 1998, as amended at 71 FR 20527, Apr. 21, 2006]

### § 362.10 Definitions.

For the purposes of this subpart, the definitions provided in § 362.2 apply. Additionally, the following definitions apply to this subpart:

(a) *Affiliate* has the same meaning as provided in subpart B of this part.

(b) *Corporate debt securities not of investment grade* means any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The term shall not include any obligation issued or guaranteed by a corporation that may be held by a Federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of HOLA (12 U.S.C. 1464(c)(1) (D), (E), (F)).

(c) *Insured state savings association* means any state-chartered savings association insured by the FDIC.

(d) *Qualified affiliate* means, in the case of a stock insured state savings association, an affiliate other than a subsidiary or an insured depository institution. In the case of a mutual savings association, "qualified affiliate" means a subsidiary other than an insured depository institution provided that all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital.

(e) *Service corporation* means any corporation the capital stock of which is

available for purchase by savings associations.

[63 FR 66326, Dec. 1, 1998, as amended at 66 FR 1029, Jan. 5, 2001]

### § 362.11 Activities of insured State savings associations.

(a) *Equity investments*—(1) *Prohibited investments*. No insured state savings association may directly acquire or retain as principal any equity investment of a type, or in an amount, that is not permissible for a Federal savings association unless the exception in paragraph (a)(2) of this section applies.

(2) *Exception: Equity investment in service corporations*. An insured state savings association that is and continues to be in compliance with the applicable capital standards as prescribed by the appropriate Federal banking agency may acquire or retain an equity investment in a service corporation:

(i) Not permissible for a Federal savings association to the extent the service corporation is engaging in activities that are allowed pursuant to the provisions of or an application under § 362.12(b); or

(ii) Of a type permissible for a Federal savings association, but in an amount exceeding the investment limits applicable to Federal savings associations, if the insured state savings association obtains the FDIC's prior consent. Consent will be given only if the FDIC determines that the amount of the investment in a service corporation engaged in such activities does not present a significant risk to the Deposit Insurance Fund. Applications should be filed in accordance with § 303.141 of this chapter and will be processed under § 303.142(b) of this chapter. Approvals granted under § 303.142(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the Deposit Insurance Fund from significant risk, to prevent unsafe or unsound practices, and/or to ensure that the activity is consistent with the purposes of Federal deposit insurance and other applicable law.

(b) *Activities other than equity investments*—(1) *Prohibited activities*. An insured state savings association may not directly engage as principal in any

activity, that is not an equity investment, of a type not permissible for a Federal savings association, and an insured state savings association shall not make nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of HOLA (12 U.S.C. 1464(c)(2)(B)), unless one of the exceptions in paragraph (b)(2) of this section applies. This section shall not be read to require the divestiture of any asset (including a nonresidential real estate loan), if the asset was acquired prior to August 9, 1989; however, any activity conducted with such asset must be conducted in accordance with this subpart. After August 9, 1989, an insured state savings association directly or through a subsidiary (other than, in the case of a mutual savings association, a subsidiary that is a qualified affiliate), may not acquire or retain any corporate debt securities not of investment grade.

(2) *Exceptions*—(i) *Consent obtained through application.* An insured state savings association that meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency may directly conduct activities prohibited by paragraph (b)(1) of this section if the savings association obtains the FDIC's prior consent. Consent will be given only if the FDIC determines that conducting the activity designated poses no significant risk to the Deposit Insurance Fund. Applications should be filed in accordance with §303.141 of this chapter and will be processed under §303.142(b) of this chapter. Approvals granted under §303.142(b) of this chapter may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the Deposit Insurance Fund from significant risk, to prevent unsafe or unsound practices, and/or to ensure that the activity is consistent with the purposes of Federal deposit insurance and other applicable law.

(ii) *Nonresidential realty loans permissible for a Federal savings association conducted in an amount not permissible.* An insured state savings association that meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency may make nonresidential real property

loans in an amount exceeding the amount described in section 5(c)(2)(B) of HOLA, if the savings association files a notice in compliance with §303.141 of this chapter and the FDIC processes the notice without objection under §303.142(a) of this chapter. Consent will be given only if the FDIC determines that engaging in such lending in the amount designated poses no significant risk to the Deposit Insurance Fund.

(iii) *Acquiring and retaining adjustable rate and money market preferred stock.* (A) An insured state savings association's investment of up to 15 percent of the association's tier one capital in adjustable rate preferred stock or money market (auction rate) preferred stock does not represent a significant risk to the Deposit Insurance Fund. An insured state savings association may conduct this activity without first obtaining the FDIC's consent, provided that the association meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(B) An insured state savings association may acquire or retain other instruments of a type determined by the FDIC to have the character of debt securities and not to represent a significant risk to the Deposit Insurance Fund. Such instruments shall be included in the 15 percent of tier one capital limit imposed in paragraph (b)(2)(iii)(A) of this section. An insured state savings association may conduct this activity without first obtaining the FDIC's consent, provided that the association meets and continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(3) *Activities permissible for a Federal savings association conducted in an*

*amount not permissible.* Except as provided in paragraph (b)(2)(ii) of this section, an insured state savings association may engage as principal in any activity, which is not an equity investment of a type permissible for a Federal savings association, in an amount in excess of that permissible for a Federal savings association, if the savings association meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency, the institution has advised the appropriate regional director (DSC) under the procedure in §303.142(c) of this chapter within thirty days before engaging in the activity, and the FDIC has not advised the insured state savings association that conducting the activity in the amount indicated poses a significant risk to the Deposit Insurance Fund. This section shall not be read to require the divestiture of any asset if the asset was acquired prior to August 9, 1989; however, any activity conducted with such asset must be conducted in accordance with this subpart.

[63 FR 66326, Dec. 1, 1998, as amended at 71 FR 20527, Apr. 21, 2006]

**§362.12 Service corporations of insured State savings associations.**

(a) *Prohibition.* A service corporation of an insured state savings association may not engage in any activity that is not permissible for a service corporation of a Federal savings association, unless it meets one of the exceptions in paragraph (b) of this section.

(b) *Exceptions—(1) Consent obtained through application.* A service corporation of an insured state savings association may conduct activities prohibited by paragraph (a) of this section if the savings association obtains the FDIC's prior written consent and the insured state savings association meets and continues to meet the applicable capital standards set by the appropriate Federal banking agency. Consent will be given only if the FDIC determines that the activity poses no significant risk to the Deposit Insurance Fund. Applications for consent should be filed in accordance with §303.141 of this chapter and will be processed under §303.142(b) of this chapter. Approvals granted under §303.142(b) of this chapter may be made subject to

any conditions or restrictions found by the FDIC to be necessary to protect the Deposit Insurance Fund from risk, to prevent unsafe or unsound banking practices, and/or to ensure that the activity is consistent with the purposes of Federal deposit insurance and other applicable law. The activities covered by this paragraph may include, but are not limited to, acquiring and retaining equity securities of a company engaged in the public sale distribution or underwriting of securities.

(2) *Service corporations conducting unrestricted activities.* The FDIC has determined that the following activities do not represent a significant risk to the Deposit Insurance Fund:

(i) [Reserved]

(ii) A service corporation of an insured state savings association may acquire and retain equity securities of a company engaged in the following activities, if the service corporation controls the company or the company is controlled by insured depository institutions, and the association continues to meet the applicable capital standards as prescribed by the appropriate Federal banking agency. The FDIC consents that such activity may be conducted by a service corporation of an insured state savings association without first obtaining the FDIC's consent. The fact that prior consent is not required by this subpart does not preclude the FDIC from taking any appropriate action with respect to the activities if the facts and circumstances warrant such action.

(A) *Equity securities of a company that engages in permissible activities.* A service corporation may own the equity securities of a company that engages in any activity permissible for a Federal savings association.

(B) *Equity securities of a company that acquires and retains adjustable-rate and money market preferred stock.* A service corporation may own the equity securities of a company that engages in any activity permissible for an insured state savings association under §362.11(b)(2)(iii) so long as instruments held under this paragraph (b)(2)(ii)(B), paragraph (b)(2)(iv) of this section, and §362.11(b)(2)(iii) in the aggregate do not exceed the limit set by §362.11(b)(2)(iii).