

Federal Deposit Insurance Corporation

§ 362.2

subsidiary of which the bank is a majority owner, is in compliance with applicable capital standards, and the FDIC has determined that the activity poses no significant risk to the appropriate deposit insurance fund. This subpart provides standards for majority-owned subsidiaries of insured state banks engaging in real estate investment activities that are not permissible for a subsidiary of a national bank.

(d) The FDIC intends to allow insured State banks and their subsidiaries to undertake only safe and sound activities and investments that do not present significant risks to the deposit insurance funds and that are consistent with the purposes of Federal deposit insurance and other applicable law. This subpart does not authorize any insured State bank to make investments or to conduct activities that are not authorized or that are prohibited by either State or Federal law.

[63 FR 66326, Dec. 1, 1998, as amended at 66 FR 1028, Jan. 5, 2001]

§ 362.2 Definitions.

For the purposes of this subpart, the following definitions will apply:

(a) *Bank, State bank, savings association, State savings association, depository institution, insured depository institution, insured State bank, Federal savings association, and insured State nonmember bank* shall each have the same respective meaning contained in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(b) *Activity* means the conduct of business by a state-chartered depository institution, including acquiring or retaining an equity investment or other investment.

(c) *Change in control* means any transaction:

(1) By a State bank or its holding company for which a notice is required to be filed with the FDIC, or the Board of Governors of the Federal Reserve System (FRB), pursuant to section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) except a transaction that is presumed to be an acquisition of control under the FDIC's or FRB's regulations implementing section 7(j);

(2) As a result of which a State bank eligible for the exception described in

§ 362.3(a)(2)(iii) is acquired by or merged into a depository institution that is not eligible for the exception, or as a result of which its holding company is acquired by or merged into a holding company which controls one or more bank subsidiaries not eligible for the exception; or

(3) In which control of the State bank is acquired by a bank holding company in a transaction requiring FRB approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842), other than a one bank holding company formation in which all or substantially all of the shares of the holding company will be owned by persons who were shareholders of the bank.

(d) *Company* means any corporation, partnership, limited liability company, business trust, association, joint venture, pool, syndicate or other similar business organization.

(e) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting securities of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(f) *Convert its charter* means an insured State bank undergoes any transaction that causes the bank to operate under a different form of charter than it had as of December 19, 1991, except a change from mutual to stock form shall not be considered a charter conversion.

(g) *Equity investment* means an ownership interest in any company; any membership interest that includes a voting right in any company; any interest in real estate; any transaction which in substance falls into any of these categories even though it may be structured as some other form of business transaction; and includes an equity security. The term "equity investment" does not include any of the foregoing if the interest is taken as security for a loan.

(h) *Equity security* means any stock (other than adjustable rate preferred stock, money market (auction rate) preferred stock, or other newly developed instrument determined by the

FDIC to have the character of debt securities), certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing.

(i) *Extension of credit, executive officer, director, principal shareholder, and related interest* each has the same respective meaning as is applicable for the purposes of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) and § 337.3 of this chapter.

(j) *Institution* shall have the same meaning as “state-chartered depository institution.”

(k) *Majority-owned subsidiary* means any corporation in which the parent insured State bank owns a majority of the outstanding voting stock.

(l) *National securities exchange* means a securities exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) and the National Market System, i.e., the top tier of the National Association of Securities Dealers Automated Quotation System.

(m) *Real estate investment activity* means any interest in real estate (other than as security for a loan) held directly or indirectly that is not permissible for a national bank.

(n) *Residents of the state* includes individuals living in the State, individuals employed in the State, any person to whom the company provided insurance as principal without interruption since such person resided in or was employed in the State, and companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State.

(o) *Security* has the same meaning as it has in part 344 of this chapter.

(p) *Significant risk to the deposit insurance fund* shall be understood to be present whenever the FDIC determines there is a high probability that any insurance fund administered by the FDIC may suffer a loss. Such risk may be present either when an activity contributes or may contribute to the decline in condition of a particular state-chartered depository institution or when a type of activity is found by the FDIC to contribute or potentially contribute to the deterioration of the overall condition of the banking system.

(q) *State-chartered depository institution* means any State bank or State savings association insured by the FDIC.

(r) *Subsidiary* means any company that is owned or controlled directly or indirectly by one or more insured depository institutions.

(s) *Tier one capital* has the same meaning as set forth in part 325 of this chapter for an insured State non-member bank. For other state-chartered depository institutions, the term “tier one capital” has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency.

(t) *Well-capitalized* has the same meaning set forth in part 325 of this chapter for an insured State non-member bank. For other state-chartered depository institutions, the term “well-capitalized” has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency.

[63 FR 66326, Dec. 1, 1998, as amended at 66 FR 1028, Jan. 5, 2001]

§ 362.3 Activities of insured State banks.

(a) *Equity investments.* (1) *Prohibited equity investments.* No insured State bank may directly or indirectly acquire or retain as principal any equity investment of a type that is not permissible for a national bank unless one of the exceptions in paragraph (a)(2) of this section applies.

(2) *Exceptions.* (i) *Equity investment in majority-owned subsidiaries.* An insured State bank may acquire or retain an equity investment in a subsidiary of which the bank is a majority owner,