FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429
Division of Supervision

Activities of Insured Depository Institutions

FIL-128-98
December 3, 1998

TO: CHIEF EXECUTIVE OFFICER

SUBJECT: *Final Rule Governing Activities and Investments of Insured Depository Institutions (Part 362 of FDIC's Rules and Regulations)*

The FDIC Board of Directors has voted to revise the agency's regulations governing the activities and investments of insured state banks and savings associations, and consolidate those regulations into a single section-Part 362 of the FDIC's rules and regulations. The Board also approved updating and incorporating into Part 362 portions of the FDIC's regulations governing the securities activities of subsidiaries and affiliates of insured state nonmember banks. The final rule, which is attached, takes effect January 1, 1999.

The revised rule provides the framework for which certain state-chartered banks or their majority-owned subsidiaries may engage in activities that are not permissible for national banks or their subsidiaries. All contemplated activities must, however, be permitted by the institution's chartering authority. The rule does not grant new powers to insured state depository institutions.

The FDIC is not advocating that insured state depository institutions should engage in the activities covered by this regulation. However, if an activity or equity investment is permissible under state law, the revised regulation will allow the FDIC to move more expeditiously on requests. If the request is routine, the regulation establishes a notice procedure. If the request does not fall within the standards to be processed as a notice, the FDIC will work diligently with the applicant to find an acceptable manner of conducting the activity.

Under the final rule, well-capitalized, state-chartered banks or their subsidiaries may engage in certain otherwise impermissible activities without seeking specific FDIC consent if the bank complies with any limits or conditions restricting those activities. Other activities require depository institutions to submit either a notice or application to the FDIC.

The rule's notice procedure will expedite the processing of requests from banks meeting various eligibility requirements. Activities to which notice processing has been extended include securities underwriting and real estate investment activities. An application process is available to banks not meeting or desiring relief from specific eligibility requirements. Like the present regulation, the revised rule will also enable banks to use the application process when seeking to engage in activities for which the notice procedure is currently unavailable.

To further expedite and simplify processing, the information required for most notices and applications is identical. If an institution qualifies for the notice procedure, consent is granted 30 days after the FDIC receives a completed notice from the applicant unless otherwise notified. If consent is required through an application, the processing period is normally 60 days.

The regulation is structured using a "menu approach" with various requirements imposed on certain activities. Those requirements may also be imposed at the FDIC's discretion when approving applications filed pursuant to this regulation. The requirements reflect conditions that the FDIC has agreed to allow for well-capitalized insured state banks or their subsidiaries to engage in activities impermissible for national banks and their subsidiaries. The standards address three broad areas:

- Eligibility requirements, including requirements for the depository institution and for the subsidiary.

- Investment and transaction restrictions, incorporating standards similar to those prescribed by section 23A and 23B.

- Capital standards, requiring insured depository institutions to be well-capitalized after deducting their equity investments in a subsidiary from regulatory capital.

Separately, the Board is seeking comment on a proposal to amend subpart B of the final regulation. The attached proposed amendment expands the scope of subpart B to include safety and soundness standards for subsidiaries of insured state nonmember banks engaging in securities underwriting activities that are permissible for a subsidiary of a national bank, but impermissible for a national bank. These activities are currently subject to section 337.4 of the FDIC's regulations, which would be removed and reserved under the proposal. The proposal would amend subpart B to apply the same standards and restrictions on all insured state nonmember bank subsidiaries engaging in securities underwriting activities that are impermissible under section 16 of the Banking Act of 1933, commonly known as the Glass-Steagall Act.

Under this proposal, the scope of subpart B would also be expanded to require insured state nonmember banks to submit notices to the FDIC of their intent to engage in any other activities that, while permissible for a subsidiary of a national bank, are impermissible for a national bank. The FDIC would use information submitted in the notices to determine whether a particular activity could adversely affect the safety and soundness of an insured state nonmember bank. Comments on the proposal to amend subpart B are due by February 1, 1998.

For further information, please contact Curtis Vaughn (202-898-6759), Examination Specialist in the Division of Supervision; or Jamey Basham (202-898-7265), Counsel in the Legal Division.

Nicholas J. Ketcha Jr.
Director

Attachment: Federal Register Dec. 1, pages 66275-66346.

Distribution: FDIC-Supervised Banks (Commercial and Savings)

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