

(s) *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 (NASDAQ).

(t) *Residents of the state* shall be understood to include companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the state.

(u) *Significant risk to the deposit insurance fund* shall be understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss.

(v) *Subsidiary* means any company directly or indirectly controlled by an insured state bank.

(w) *Tier one capital* shall have the same meaning as set forth in Part 325 of this chapter in the case of an insured state nonmember bank and, in the case of an insured state member bank, shall have the same meaning as set forth in regulations defining the term tier one capital as adopted by the bank's appropriate federal banking agency.

(x) *Well-capitalized* shall have the same meaning as is found in §325.103(b)(1) of this chapter, however, for the purposes of applying this definition, the terms *risk-weighted assets*, *total capital*, and *total book assets* shall have the respective meaning prescribed in regulations issued by the appropriate federal banking agency. In order to be considered well-capitalized for the purposes of §362.3(b)(7) and 362.4(c)(2)(i), an insured state bank must meet the above requirements before excluding the bank's investment in its insurance underwriting department and/or its insurance underwriting subsidiary and the bank must be adequately capitalized after such investment is excluded from the bank's capital. The term *adequately capitalized* shall have the same meaning as is found in §325.103(b)(2) of this chapter.

[57 FR 53234, Nov. 9, 1992, as amended at 58 FR 64483, Dec. 8, 1993]

§362.3 Equity investments.

(a) *Prohibited investments.* No insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank.

(b) *Exceptions—(1) Majority owned subsidiaries.* An insured state bank is not prohibited from acquiring or retaining a majority interest in a subsidiary. If the FDIC denied an application by a Savings Association Insurance Fund (SAIF) member state bank for permission to acquire or retain the majority interest in a subsidiary pursuant to §333.3 of this chapter, this exception does not apply. If the denial concerned an application for permission to retain the investment, the SAIF member state bank must divest its interest in the subsidiary in accordance with whatever conditions and restrictions are set forth in the FDIC's order denying the application.

(2) *Qualified housing projects.* (i) Subject to the limitation contained in paragraph (b)(2)(ii) of this section, an insured state bank is not prohibited from investing as a limited partner in a partnership the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a qualified housing project. A qualified housing project shall be understood to mean residential real estate intended to primarily benefit lower income persons throughout the period of the bank's investment including but not necessarily limited to any project eligible for the low income housing tax credit under section 42 of the Internal Revenue Code (26 U.S.C. 42). A residential real estate project that does not qualify for the tax credit under section 42 of the Internal Revenue Code may be considered primarily for the benefit of lower income persons if 50 percent or more of the housing units are to be occupied by lower income persons. A real estate project that does not qualify for the tax credit under section 42 of the Internal Revenue Code will be considered residential despite the fact that some portion of the total square footage of the project is utilized for commercial purposes provided that such commercial use is not the primary purpose of the project.

(ii) Investments described in paragraph (b)(2)(i) of this section may only be made if the bank's investment in the partnership, when aggregated with any existing investment in such a partnership or partnerships, does not exceed 2 percent of the bank's total assets as reported on the bank's most recent consolidated report of condition. For the purposes of this section, legally binding commitments are included as part of the bank's investment.

(3) *Savings bank life insurance.* Unless it is otherwise found to pose a significant risk to the insurance fund of which the bank is a member, an insured state bank located in Massachusetts, New York, or Connecticut is not prohibited from owning stock in a savings bank life insurance company provided that the savings bank life insurance company discloses to purchasers of life insurance policies, annuities, and other insurance products that the policies offered to the public are not insured by the FDIC, are not obligations of, and are not guaranteed by, any insured state bank. The following or similar statement will satisfy this requirement: "This [policy, annuity, insurance product] is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank." The disclosure must be made prior to the time of purchase, must be prominent, and must be in a separate document clearly labeled "consumer disclosure" if the disclosure does not appear on the face of the policy, annuity or other insurance product. If state law or regulation provides for substantially similar disclosure requirements, compliance with the state imposed disclosure requirements will satisfy the requirements of this paragraph (b)(3).

(4) *Common or preferred stock; shares of investment companies.* (i) To the extent permitted by the FDIC, and subject to the requirements of paragraph (d) of this section, an insured state bank that is located in a state which as of September 30, 1991 authorized investment in:

(A)(1) Common or preferred stock listed on a national securities exchange (listed stock); or

(2) Shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (registered shares); and

(B) Which during any time in the period beginning on September 30, 1990 and ending on November 26, 1991 made or maintained an investment in such listed stock or registered shares, may retain whatever listed stock or registered shares that were lawfully acquired or held prior to December 19, 1991, and continue to acquire listed stock and/or registered shares.

(ii) The exception provided for by paragraph (b)(4)(i) of this section shall cease to apply to any insured state bank if the bank converts its charter, the bank undergoes any transaction for which notice is required to be filed under 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 §303.4(a) of this chapter, the bank undergoes any transaction subject to 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, the bank is acquired by or merged into a depository institution other than a depository institution described in paragraph (b)(4)(i) of this section, or control of the bank's parent company changes. In such event the insured state bank may not make any additional investments pursuant to the exception provided for by paragraph (b)(4)(i) of this section. The bank is not prohibited under this section from retaining its existing investments provided that the FDIC does not order a divestiture under paragraph (d)(3) of this section, section 8 of the Federal Deposit Insurance Act (FDI Act, 12 U.S.C. 1818) or some other provision of the FDI Act or FDIC's regulations, or some other provision of law.

(5) *Stock of company that provides director and officer liability insurance.* An insured state bank is not prohibited from acquiring up to 10 percent of the voting stock of a company that solely provides or reinsures directors', trustees', and officers' liability insurance coverage or bankers' blanket bond

group insurance coverage for insured depository institutions.

(6) *Shares of depository institutions.* An insured state bank is not prohibited from acquiring or retaining the voting shares of a depository institution if the institution engages only in activities permissible for national banks; the institution is subject to examination and regulation by a state bank supervisor; 20 or more depository institutions own voting shares of the institution but no one institution owns more than 15 percent of the shares; and the institution's voting shares (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees) are owned only by depository institutions.

(7) *Interests in insurance subsidiaries.*

(i) A well-capitalized insured state bank is not prohibited from retaining after December 19, 1992 its equity investment in a majority owned subsidiary that was lawfully providing insurance as principal in a state on November 21, 1991 of a sort that could not be so provided by a national bank provided that the activities of the subsidiary continue to be limited to underwriting insurance of the same type provided by the subsidiary as of November 21, 1991 to residents of the state, individuals employed in the state, and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. In the case of resident companies or partnerships, the subsidiary's activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state.

(ii) A bank that does not meet the requirements necessary to be considered well-capitalized for the purposes of paragraph (b)(7)(i) of this section may file an application with the regional director for the Division of Supervision for the region in which the bank's principal office is located requesting permission to retain its insurance underwriting department and/or subsidiary. Such application will be granted solely in the FDIC's discretion but in no

event will it be granted unless the FDIC determines that the bank is expected to satisfy the definition of well-capitalized for the purposes of paragraph (b)(7) no later than three years from December 9, 1992, and it is determined that retention of the department and/or subsidiary until the bank meets the definition of well-capitalized will not pose a significant risk to the insurance fund. The application may be in letter form and should contain the bank's plan for meeting the well-capitalized definition before three years from December 9, 1992, taking into consideration the gradual deduction of the bank's investment over that period.

(iii) An insured state bank is not prohibited from retaining after December 19, 1992 its equity investment in a majority owned title insurance underwriting subsidiary provided that the bank was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law and none of the transactions described in paragraph (b)(4)(ii) of this section (other than a charter conversion) has occurred since June 1, 1991.

(c) *Divestiture of prohibited equity investments—(1) Requirement to divest.* Any equity investment acquired prior to December 19, 1991 that is not of a type, or in an amount, that is permissible for a national bank, and which does not fall within one of the exceptions in paragraph (b) of this section, must be divested as quickly as prudently possible but in no event later than December 19, 1996. If a SAIF member state bank holds an equity investment that was subject to divestiture pursuant to §333.3 of this chapter, and the equity investment is subject to divestiture under this paragraph (c)(1) the equity investment must be divested as quickly as prudently possible but in no event later than July 1, 1994 or any earlier date established by a divestiture plan that was filed by the bank under, and approved by the FDIC pursuant to, §333.3 of this chapter.

(2) *Requirement to file divestiture plan.* Any insured state bank that is required by paragraph (c)(1) of this section to divest an equity investment must submit a divestiture plan with the regional director for the Division of Supervision

for the region in which the bank's principal office is located not later than 60 days from December 9, 1992. An insured state bank that has submitted a plan pursuant to this section may proceed to act in accordance with that plan unless and until it is informed in writing by the FDIC that the plan is unacceptable.

(3) *Content of divestiture plan.* The divestiture plan shall:

(i) Describe the obligor, type, amount, book and market values (estimated or known) of the equity investments subject to divestiture as of the bank's most recent consolidated report of condition prior to the filing;

(ii) Set forth the bank's plan to comply with paragraph (c)(1) of this section;

(iii) Describe the anticipated gain or loss (anticipated or realized) if any from the divestiture of the investment and the impact thereof on the bank's capital (including capital ratios before and after the sale);

(iv) Include a copy of a resolution by the bank's board of directors or board of trustees authorizing the filing of the divestiture plan; and

(v) Provide such other information as requested by the regional director.

(4) *Retention of equity investments during divestiture period.* Upon review of the divestiture plan and such additional information as requested by the regional director, and at any time during the divestiture period, the FDIC may impose such conditions and restrictions on the retention of the equity investments as the FDIC deems appropriate including requiring divestiture in advance of December 19, 1996.

(d) *Notice and approval of intent to invest in common or preferred stock or shares of an investment company; divestiture of excess investments—(1) Notice and required FDIC determination.* No insured state bank may acquire or retain any listed stock or registered shares pursuant to paragraph (b)(4) of this section unless the bank files a one-time notice with the FDIC setting forth the bank's intention to acquire and retain the listed stock or registered shares and the FDIC has determined that acquiring or retaining listed stock or registered shares will not pose a significant risk to the deposit insurance fund

of which the bank is a member. The notice must be filed with the regional director for the Division of Supervision for the region in which the bank's principal office is located.

(2) *Content of notice.* The notice shall contain:

(i) A statement indicating whether the bank made or maintained investments in listed stock and/or registered shares during the period between September 30, 1990 and November 26, 1991;

(ii) The aggregate dollar book value amount of the bank's investment in listed stock and registered shares held as of December 19, 1991 expressed as a percentage of the bank's tier one capital as measured on December 19, 1991 (tier one capital as reported on the bank's December 31, 1991 consolidated report of condition may be used in lieu of calculating tier one capital as of December 19, 1991);

(iii) The aggregate highest dollar book value amount of the bank's investments in listed stock and registered shares between September 30, 1990 and November 26, 1991 expressed as a percentage of tier one capital as reported in the consolidated report of condition for the quarter in which the aggregate high dollar amount of investment occurred;

(iv) A description of the bank's funds management policies and how the bank's investments (planned or existing) in listed stock and/or registered shares relate to the objectives set out in the bank's funds management policies;

(v) A description of the bank's investment policies and a discussion of to what extent those policies:

(A) Limit concentrations in listed stock and/or registered shares both by issue and by industry;

(B) Set an aggregate limit on investment in listed stock and/or registered shares; and

(C) Deal with the sale of listed stock and/or registered shares in light of market conditions;

(vi) A discussion of the parameters used to determine the quality of the bank's outstanding and proposed investments in listed stock and/or registered shares as well as future investments;

(vii) A copy of a resolution by the board of directors or board of trustees authorizing the filing of the notice; and

(viii) Such additional information as deemed appropriate by the regional director.

(3) *FDIC determination.* Approval of a notice filed under paragraph (d)(1) of this section will not be granted unless the FDIC determines that acquiring and retaining the listed stock and/or registered shares does not pose a significant risk to the insurance fund of which the bank is a member. Approval may be made subject to whatever conditions or restrictions the FDIC determines is necessary or appropriate. The FDIC may require divestiture of some or all of the investments in listed stock or registered shares made during the period from September 30, 1990 to December 19, 1991, as well as any investments in listed stock or registered shares made subsequent to that period if it is determined that retention of the investments in question will have an adverse effect on the safety and soundness of the bank.

(4) *Maximum permissible investment.* (i) The maximum permissible investment in listed stock and registered shares an insured state bank may make pursuant to paragraph (b)(4) of this section may in no event exceed one hundred percent of the bank's tier one capital as measured in its most recent consolidated report of condition. Book value of the investment shall be used for the purposes of compliance with this limit. Generally, it will be presumed that it does not pose a significant risk to the fund for a well-capitalized bank to acquire and retain listed stock and/or registered shares pursuant to paragraph (b)(4) of this section up to a maximum of one hundred percent of the bank's tier one capital, and absent some mitigating factors, it will also be presumed that it does not present a significant risk to the fund for an adequately capitalized bank to acquire and retain such stock and/or shares up to a maximum of one hundred percent of the bank's tier one capital. It will also be presumed, absent some mitigating factors, that it does present a significant risk to the fund for a bank that is under capitalized to acquire or retain listed stock and/or registered shares in

excess of the highest aggregate level of investment made by the bank in such listed stock and/or registered shares during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported by the bank in its consolidated report of condition for the quarter in which the high aggregate investment occurred. "Adequately capitalized" and "under capitalized" shall have the same meaning as is found in §325.103 of this chapter.

(ii) The FDIC, in response to a notice filed under paragraph (d)(1) of this section, may set a percentage as the maximum permissible investment for any insured state bank that is lower than that which would otherwise be applicable under paragraph (d)(4)(i) of this section.

(iii) Any acquisition of listed stock or registered shares by an insured state bank made after December 19, 1991 pursuant to approval of a notice filed under paragraph (d)(1) of this section may not, when made, exceed the maximum permissible investment percentage (as set out in the FDIC's approval of such notice) of the bank's tier one capital as reported on the bank's consolidated report of condition for the period immediately preceding the acquisition.

(5) *Divestiture of excess stock and/or shares.* (i) An insured state bank that held as of December 19, 1991 investments in listed stock and/or registered shares in an aggregate amount in excess of 100 percent of the bank's tier one capital as measured on December 19, 1991 is prohibited from retaining the excess listed stock and/or registered shares. (Tier one capital as reported on the bank's December 31, 1991 consolidated report of condition may be used in lieu of calculating tier one capital as of December 19, 1991.) Such bank's outstanding investment in listed stock or registered shares must comply by no later than December 19, 1994 with the maximum permissible investment set for the bank by the FDIC in connection with the notice filed pursuant to §362.3(d)(1) if the bank's maximum permissible investment is 100 percent of tier one capital. In such event, the bank shall divest the excess investment by not less than $\frac{1}{3}$ in each of the

three years beginning on December 19, 1991, provided however, that the bank shall be relieved of the obligation to divest at least $\frac{1}{3}$ of its excess investment each year if divesting a lesser amount will reduce the bank's outstanding investment to 100 percent of its current tier one capital. If the bank's maximum permissible investment set by the FDIC is lower than 100 percent of tier one capital, paragraph (d)(5)(ii) of this section shall apply.

(ii) If an insured state bank does not receive approval in connection with a notice filed pursuant to paragraph (d)(1) of this section to retain its outstanding investment in listed stock and/or registered shares, the bank must, as quickly as prudently possible but in no event later than December 19, 1996, divest the listed stock and/or registered shares for which approval to retain was denied. The bank must file a divestiture plan with the regional director for the Division of Supervision for the region in which the bank's principal office is located no later than 60 days after the bank receives notice that approval to retain the investment(s) was denied. The divestiture plan shall contain the information specified in paragraph (c)(3) of this section.

[57 FR 53234, Nov. 9, 1992; 58 FR 59787, Nov. 10, 1993]

§362.4 Activities of insured state banks and their subsidiaries.

(a) *General prohibitions.* (1) Except as otherwise provided in this part, after December 19, 1992, an insured state bank may not directly engage as principal in any activity that is not permissible for a national bank, and a majority-owned subsidiary of an insured state bank may not engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the bank meets and continues to meet the applicable minimum capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the conduct of the activity by the bank and/or its majority-owned subsidiary will not pose a significant risk to the affected deposit insurance fund. Applications for consent to directly, or indirectly through a majority-owned subsidiary, engage as

principal in activities that are not permissible for a national bank or a subsidiary of a national bank should be filed in accordance with §362.4(d). An insured state bank must file an application for each subsidiary regardless of whether the bank previously obtained consent for a subsidiary to engage as principal in the same activity. An insured state bank that obtained the FDIC's consent pursuant to §333.3 of this chapter prior to that section's repeal to directly or indirectly through a subsidiary engage as principal in an activity that was otherwise impermissible under §333.3 of this chapter and which is impermissible under this part without the FDIC's consent, does not need to obtain the FDIC's consent pursuant to this part in order to continue the activity.

(2) Except as otherwise provided in this part, no insured state bank may directly or indirectly through a subsidiary, engage in insurance underwriting except to the extent such activities are permissible for a national bank.

(b) *Phase-out for banks that do not meet capital standard.* (1) Any insured state bank which does not meet the applicable minimum capital requirements set out in paragraph (a)(1) of this section and which as of December 19, 1992, directly, or indirectly through a subsidiary, engaged as principal in any activity that is not permissible for a national bank or a subsidiary of a national bank, must cease the impermissible activity as soon as practicable but in no event later than June 8, 1994, unless an extension is granted by the FDIC for good cause.

(2) In no event shall any extension granted pursuant to this paragraph exceed one year from December 8, 1993. If the insured state bank is expected to meet the requisite capital level prior to June 8, 1994, the bank may apply for permission to continue the activity. An insured state bank that does not meet the requisite capital requirements, and which has a majority-owned subsidiary that has equity investments in real estate which are not permissible for a subsidiary of a national bank, must divest the subsidiary or the equity investments in the real estate as soon as practicable but in no event later than December 19, 1996.