

apply for the FDIC's consent under § 362.4(b)(1).

(4) [Reserved]

(5) [Reserved]

(6) *Adjustable rate or money market preferred stock.* An insured State bank owning adjustable rate or money market (auction rate) preferred stock pursuant to § 362.4(c)(3)(v) in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), in excess of the amount limit in § 362.3(b)(2)(iii) may continue to hold any overlimit shares of such stock acquired before January 1, 1999, until redeemed or repurchased by the issuer, but such stock shall be included as part of the amount limit in § 362.3(b)(2)(iii) when determining whether the bank may acquire new stock thereunder.

(c) *Charter conversions.* (1) An insured State bank that has converted its charter from an insured state savings association may continue activities through a majority-owned subsidiary that were permissible prior to the time it converted its charter only if the insured State bank receives the FDIC's consent. Except as provided in paragraph (c)(2) of this section, the insured State bank should apply under § 362.4(b)(1), submit any notice required under § 362.4(b)(4) or (5), or comply with the provisions of § 362.4(b)(3), (6), or (7) if applicable, to continue the activity.

(2) *Exception for prior consent.* If the FDIC had granted consent to the savings association under section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831(e)) prior to the time the savings association converted its charter, the insured State bank may continue the activities without providing notice or making application to the FDIC, provided that the bank and its subsidiary as applicable are in compliance with:

(i) The terms of the FDIC approval order; and

(ii) The provisions of § 362.4(c)(2), (d), and (e) regarding operating as an "eligible subsidiary", "investment and transaction limits", and "capital requirements".

(3) *Divestiture.* An insured State bank that does not receive FDIC consent shall divest of the nonconforming investment as soon as practical but in no

event later than two years from the date of charter conversion.

## Subpart B—Safety and Soundness Rules Governing Insured State Nonmember Banks

### § 362.6 Purpose and scope.

This subpart, along with the notice and application procedures in subpart G of part 303 of this chapter apply to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. The FDIC intends to allow insured state nonmember banks and their subsidiaries to undertake only safe and sound activities and investments that would not present a significant risk to the deposit insurance fund and that are consistent with the purposes of Federal deposit insurance and other law. The following standards shall apply for insured state nonmember banks to conduct real estate investment activities through a subsidiary if those activities are permissible for a national bank subsidiary but are not permissible for the national bank parent itself. Additionally, the following standards shall apply to affiliates of insured state nonmember banks that are not affiliated with a bank holding company if those affiliates engage in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities.

### § 362.7 Definitions.

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

(a) *Affiliate* shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state nonmember bank, but does not include a subsidiary of an insured state nonmember bank.

(b) *Activity, company, control, equity security, insured state nonmember bank, real estate investment activity, security, and subsidiary* have the same meaning as provided in subpart A of this part.

### § 362.8 Restrictions on activities of insured state nonmember banks.

(a) *Real estate investment activities by subsidiaries of insured state nonmember*

*banks.* The FDIC has found that real estate investment activities may have adverse effects on the safety and soundness of insured state nonmember banks. Notwithstanding any interpretations, orders, circulars or official bulletins issued by the Office of the Comptroller of the Currency regarding activities permissible for subsidiaries of a national bank that are not permissible for the parent national bank itself under 12 CFR 5.34(f), insured state nonmember banks may not establish or acquire a subsidiary that engages in such real estate investment activities unless the insured state nonmember bank:

(1) Has an approval previously granted by the FDIC and continues to meet the conditions and restrictions of the approval; or

(2) Meets the requirements for engaging in real estate investment activities as set forth in §362.4(b)(5), and submits a corresponding notice in compliance with §303.121 of this chapter and the FDIC processes the notice without objection under §303.122(a) of this chapter; or submits an application in compliance with §303.121 of this chapter and the FDIC grants its consent under the procedure in §303.122(b) of this chapter.

(b) *Affiliation with securities companies.* The FDIC has found that an unrestricted affiliation between an insured state nonmember bank and a securities company may have adverse effects on the safety and soundness of insured state nonmember banks. An insured state nonmember bank which is affiliated with a company that is not treated as a bank holding company pursuant to section 4(f) of the Bank Holding Company Act (12 U.S.C. 1843(f)) is prohibited from becoming or remaining affiliated with any company that directly engages in the public sale, distribution or underwriting of stocks, bonds, debentures, notes, or other securities which is not permissible for a national bank unless it submits an application in compliance with §303.121 of this chapter and the FDIC grants its consent under the procedure in §303.122(b) of this chapter, or:

(1) The securities business of the affiliate is physically separate and distinct in its operations from the operations of the bank, provided that this

requirement shall not be construed to prohibit the bank and its affiliate from sharing the same facility if the area where the affiliate conducts retail sales activity with the public is physically distinct from the routine deposit taking area of the bank;

(2) The affiliate has a chief executive officer who is not an employee of the bank;

(3) A majority of the affiliate's board of directors are not directors, officers, or employees of the bank;

(4) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and the state-chartered depository institution is not responsible for and does not guarantee the obligations of the affiliate;

(5) The bank adopts policies and procedures, including appropriate limits on exposure, to govern its participation in financing transactions underwritten by an underwriting affiliate;

(6) The bank does not express an opinion on the value or the advisability of the purchase or sale of securities underwritten or dealt in by an affiliate unless it notifies the customer that the entity underwriting, making a market, distributing or dealing in the securities is an affiliate of the bank;

(7) The bank does not purchase as principal or fiduciary during the existence of any underwriting or selling syndicate any securities underwritten by the affiliate unless the purchase is approved by the bank's board of directors before the securities are initially offered for sale to the public;

(8) The bank does not condition any extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's affiliate to underwrite or distribute the company's securities;

(9) The bank does not condition any extension of credit or the offering of any service to any person or company on the requirement that the person or company purchase any security underwritten or distributed by the affiliate; and

(10) The bank complies with the investment and transaction limitations

of §362.4(d). For the purposes of applying these restrictions, references to the term “subsidiary” in §362.4(d)(2), (3), and (4) shall be deemed to refer to the affiliate. For the purposes of applying these limitations, the term “investment” as defined in §362.4(d)(2)(ii) shall also include any equity securities of the affiliate held by the insured State bank.

### Subpart C—Activities of Insured State Savings Associations

#### §362.9 Purpose and scope.

(a) This subpart, along with the notice and application procedures in subpart H of part 303 of this chapter, implements the provisions of section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) that restrict and prohibit insured state savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for Federal savings associations and their service corporations. The phrase “activity permissible for a Federal savings association” means any activity authorized for Federal savings associations under any statute including the Home Owners’ Loan Act (HOLA, 12 U.S.C. 1464 *et seq.*), as well as activities recognized as permissible for a Federal savings association in regulations, official thrift bulletins, orders or written interpretations issued by the Office of Thrift Supervision (OTS), or its predecessor, the Federal Home Loan Bank Board.

(b) This subpart does not cover the following activities:

(1) Activities conducted by the insured state savings association other than “as principal”, defined for purposes of this subpart as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services.

(2) Interests in real estate in which the real property is used or intended in good faith to be used within a reasonable time by an insured savings association or its service corporations as offices or related facilities for the conduct of its business or future expansion of its business or used as public welfare investments of a type and in an amount permissible for Federal savings associations.

(3) Equity investments acquired in connection with debts previously contracted (DPC) if the insured savings association or its service corporation takes only such actions as would be permissible for a Federal savings association’s or its service corporation’s DPC holdings.

(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 funds 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.

#### §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* shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state savings association.

(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)).