

Board determines are incidental to the international or foreign business of Edge corporations.

(f) *Agreement corporations.* With the prior approval of the Board, a member bank or bank holding company may invest in a federally- or state-chartered corporation that has entered into an agreement or undertaking with the Board that it will not exercise any power that is impermissible for an Edge corporation under this subpart.

§ 211.5 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to activities of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Investment requirements*—(1) *Eligible investments.* Subject to the limitations in paragraph (b)(2) of this section, an investor may directly or indirectly:

(i) Invest in a subsidiary that engages solely in activities listed in paragraph (d) of this section or in such other activities as the Board has determined in the circumstances of a particular case are permissible; provided however that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than 5 percent of either the consolidated assets or revenues of the acquired organization;

(ii) Invest in a joint venture provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or revenues are attributable to activities not listed in paragraph (d) of this section; and

(iii) Make portfolio investments in an organization, provided however that:

(A) The total direct and indirect portfolio investments by the investor and its affiliates in organizations engaged in activities that are not permissible for joint ventures do not exceed:

(1) 40 percent of the total equity of the organization, when combined with shares in the organization held in trading or dealing accounts pursuant to paragraph (d)(14) of this section and shares in the organization held under any other authority; or

(2) 25 percent of the investor's Tier 1 capital where the investor is a bank holding company or 100 percent of Tier 1 capital for any other investor, when combined with underwriting commitments and shares held in trading or dealing accounts pursuant to paragraph (d)(14) of this section;⁷ and

(B) Any loans and extensions of credit made by an investor or its affiliates to the organization are on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the investor or its affiliates and nonaffiliated persons.

(2) *Direct investments by member banks.* A member bank's direct investments under section 25 of the FRA shall be limited to:

(i) Foreign banks;

(ii) Foreign organizations formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank; and

(iii) Subsidiaries established pursuant to § 211.3(b)(9) of this subpart.

(3) *Investment limit.* In computing the amount that may be invested in any organization under this section, there shall be included any unpaid amount for which the investor is liable and any investments in the same organization held by affiliates under any authority.

(4) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(i) The organization invested in:

⁷For this purpose, a direct subsidiary of a member bank is deemed to be an investor.

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(A) Engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States;

(B) Engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States except that an investor may hold up to 5 percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(C) Engages in impermissible activities to an extent not permitted under paragraph (b)(1) of this section; or

(ii) After notice and opportunity for hearing, the investor is advised by the Board that its investment is inappropriate under the FRA, the BHC Act, or this subpart.

(c) *Investment procedures.*⁸ Direct and indirect investments shall be made in accordance with the general consent, prior notice, or specific consent procedures contained in this paragraph. Except as the Board may otherwise determine, in order for an investor to make investments under the general consent procedure, the investor and any other investor of which it is a subsidiary shall be in compliance with applicable minimum standards for capital adequacy. The Board may at any time, upon notice, modify or suspend the general consent and prior notice procedures with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities. An investor shall apply for and receive the prior specific consent of the Board for its initial investment in its first subsidiary or joint venture unless an affiliate has made such an investment. Authority to make investments under prior notice or specific consent shall expire one year from the earliest date on which the authority could have been exercised, unless the Board extends the period.

⁸When necessary, the general consent and prior notice provisions of this section constitute the Board's approval under the eighth paragraph of section 25(a) of the FRA for investments in excess of the limitations therein based on capital and surplus.

(1) *General consent.* Subject to the other limitations of this section, the Board grants its general consent for the following:⁹

(i) Any investment in a joint venture or subsidiary, and any portfolio investment, if the total amount invested (in one transaction or in a series of transactions) does not exceed the lesser of:

(A) \$25 million; or

(B) 5 percent of the investor's Tier 1 capital in the case of a member bank, bank holding company, or Edge corporation engaged in banking, or 25 percent of the investor's Tier 1 capital in the case of an Edge corporation not engaged in banking;

(ii) Any additional investment in an organization in any calendar year so long as:

(A) The total amount invested in that calendar year does not exceed 10 percent of the investor's Tier 1 capital; and

(B) The total amount invested under § 211.5 (including investments made pursuant to specific consent or prior notice) in that calendar year does not exceed cash dividends reinvested under paragraph (c)(1)(iii) of this section plus 10 percent of the investor's direct and indirect historical cost¹⁰ in the organization, which investment authority, to the extent unexercised, may be carried

⁹In determining compliance with these limits, an investor shall combine the value of all shares of an organization held in trading or dealing accounts under § 211.5(d)(14) of this part with investments in the same organization. Shares held in trading or dealing accounts are also subject to the limits in § 211.5(d)(14) of this part.

¹⁰The *historical cost* of an investment consists of the actual amounts paid for shares or otherwise contributed to the capital accounts, as measured in dollars at the exchange rate in effect at the time each investment was made. It does not include subordinated debt or unpaid commitments to invest even though these may be considered investments for other purposes of this part. For investments acquired indirectly as a result of acquiring a subsidiary, the historical cost to the investor is measured as of the date of acquisition of the subsidiary at the net asset value of the equity interest in the case of subsidiaries and joint ventures, and in the case of portfolio investments, at the book carrying value.

forward and accumulated for up to five consecutive years;

(iii) Any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding twelve calendar months; or

(iv) Any investment that is acquired from an affiliate at net asset value.

(2)(i) *Expanded general consent for de novo investments.* Notwithstanding the amount limitations of paragraph (c)(1) of this section, but subject to the other limitations of this section, the Board grants expanded general consent authority for investments in an organization by an investor that is strongly capitalized and well managed if:

(A) The activities of the organization are limited to activities in which a national bank may engage directly or in which a subsidiary may engage under paragraph (d) of this section;

(B) In the case of an investor that is an Edge corporation that is not engaged in banking or an Agreement corporation, the total amount invested in such organization (in one transaction or a series of transactions) does not exceed the lesser of 20 percent of the investor's Tier 1 capital or 2 percent of the Tier 1 capital of the parent member bank;

(C) In the case of a bank holding company or member bank investor, the total amount invested in such organization (in one transaction or a series of transactions) directly or indirectly does not exceed 2 percent of the investor's Tier 1 capital;

(D) All investments made, directly or indirectly, by an Edge corporation not engaged in banking or an Agreement corporation during the previous 12-month period under paragraph (c)(2) of this section, when aggregated with the proposed investment, would not exceed the lesser of 50 percent of the total capital of the Edge or Agreement corporation, or 5 percent of the total capital of the parent member bank;

(E) All investments made, directly or indirectly, by a member bank or a bank holding company during the previous 12-month period under paragraph (c)(2) of this section, when aggregated with the proposed investment, would not exceed 5 percent of its total capital; and

(F) Both before and immediately after the proposed investment the investor, its parent member bank, if any, and any parent bank holding company are strongly capitalized and well managed.

(ii) *Determining aggregate investment limits.* For purposes of determining compliance with the aggregate investment limits set out in paragraphs (c)(2)(i)(D) and (E) of this section, an investment by an investor in a subsidiary shall be counted only once notwithstanding that such subsidiary may, within 12 months of the date of making the investment, downstream all or any part of such investment to another subsidiary.

(iii) *Additional investments.* An investor that makes investments under paragraph (c)(2)(i) of this section may also make additional investments in an organization under the standards set forth in paragraphs (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv) of this section.

(iv) *Ineligible investments.* The following investments are not eligible for the general consent under paragraph (c)(2)(i) of this section:

(A) An investment in a foreign country where the investor does not have an affiliate or a branch;

(B) The establishment or acquisition of an initial subsidiary bank in a foreign country;

(C) Investments in general partnerships or unlimited liability companies; and

(D) An acquisition of shares or assets of an organization that is not an affiliate or joint venture of the investor.

(v) *Post-investment notice.* By the end of the month following the month in which the investment is made, the investor shall provide the Board with the following information relating to the investment:

(A) If the investment is in a joint venture, the respective responsibilities of the parties to the joint venture;

(B) Projections for the organization in which the investment is made for the first year following the investment; and

(C) Where the investment is made in an organization that incurred a loss in the last year, a description of the reasons for the loss and the steps taken to address the problem.

(3) *Prior notice.* An investment that does not qualify under the general consent procedure may be made after the investor has given 45 days' prior written notice to the Board. The Board may waive the 45-day period if it finds immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is received. The Board may suspend the period or act on the investment under the Board's specific consent procedures.

(4) *Specific consent.* Any investment that does not qualify for either the general consent or the prior notice procedure shall not be consummated without the specific consent of the Board.

(d) *Permissible activities.* The Board has determined that the following activities are usual in connection with the transaction of banking or other financial operations abroad:

(1) Commercial and other banking activities;

(2) Financing, including commercial financing, consumer financing, mortgage banking, and factoring;

(3) Leasing real or personal property, or acting as agent, broker, or advisor in leasing real or personal property, if the lease serves as the functional equivalent of an extension of credit to the lessee of the property;

(4) Acting as fiduciary;

(5) Underwriting credit life insurance and credit accident and health insurance;

(6) Performing services for other direct or indirect operations of a U.S. banking organization, including representative functions, sale of long-term debt, name saving, holding assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible domestically for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the BHC Act;

(7) Holding the premises of a branch of an Edge corporation or member bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or subsidiary;

(8) Providing investment, financial, or economic advisory services;

(9) General insurance agency and brokerage;

(10) Data processing;

(11) Organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise managerial control over the firms in which it invests;

(12) Performing management consulting services provided that such services when rendered with respect to the U.S. market shall be restricted to the initial entry;

(13) Underwriting, distributing and dealing in debt securities outside the United States;

(14) Underwriting, distributing, and dealing in equity securities outside the United States as follows:

(i) By an investor, or an affiliate, that had commenced such activities prior to March 27, 1991, and subject to limitations in effect at that time (12 CFR part 211 (1990)); or

(ii) With the approval of the Board, underwriting equity securities if:

(A) Commitments by an investor and its affiliates for the shares of an organization do not in the aggregate exceed the lesser of \$60 million or 25 percent of the investor's Tier 1 capital unless the underwriter is covered by binding commitments from subunderwriters or other purchasers obtained by the investor or its affiliates; and

(B) Commitments by an investor and its affiliates for the shares of an organization in excess of those permitted by paragraph (d)(14)(ii)(A) of this section provided that:

(1) The underwriting level approved by the Board for the investor and its affiliates in excess of the limitations of paragraph (d)(14)(ii)(A) of this section is fully deducted from the capital of the bank holding company, and from the capital of the bank where the securities activities are conducted by a subsidiary of a U.S. bank;¹¹ and

(2) In the Board's judgment such bank holding company and bank would remain strongly capitalized after such deduction from capital; and

(iii) With the approval of the Board, dealing in the shares of an organization

¹¹Fifty percent of such capital deductions shall be from Tier 1 capital.

(including the shares of a U.S. organization with respect to foreign persons only and subject to the limitations on owning or controlling shares of a company in section 4 of the BHC Act and the Board's Regulation Y (12 CFR part 225)) where the shares held in the trading or dealing accounts of an investor and its affiliates, when combined with any shares held pursuant to the authority provided under paragraph (b) of this section, do not in the aggregate exceed the lesser of \$30 million or 10 percent of the investor's Tier 1 capital, provided however that:

(A) For purposes of determining compliance with the limitations of this paragraph (d)(14)(iii) and paragraph (b)(1)(iii)(A)(2) of this section, long and short positions in the same security may be netted and positions in a security may be offset by futures, forwards, options, and similar instruments referenced to the same security through hedging methods approved by the Board, except that any position in a security shall not be deemed to have been reduced by more than 75 percent;

(B) Any shares held in trading or dealing accounts for longer than 90 days shall be reported to the senior management of the investor;

(C) Any shares acquired pursuant to an underwriting commitment for up to 90 days after the payment date for such underwriting shall not be subject to the dollar and percentage limitations of paragraph (d)(14)(iii) of this section or the investment provisions of paragraph (b) of this section, other than the aggregate limits in paragraph (b)(1)(iii)(A)(2) of this section; and

(D) Shares of an organization held in all trading and dealing accounts, when combined with all other equity interests in the organization held by the investor and its affiliates, other than underwriting commitments for shares and shares held pursuant to an underwriting for 90 days following the payment date for such shares, must conform to the permissible limits for investments in an organization under paragraph (b) of this section.¹²

¹²Underwriting commitments are combined with shares held by an investor and its affiliates (other than an affiliate authorized to deal in shares under section 4(c)(8) of the BHC Act) in dealing or trading accounts and

(iv) Underwriting commitments for shares and shares held by an affiliate authorized to underwrite equity securities under section 4(c)(8) of the BHC Act shall not be included in determining compliance with the aggregate limits in paragraph (b)(1)(iii)(A)(2) of this section and the limits of paragraphs (d)(14)(ii)(A) and (iii) of this section, except that shares held by such an affiliate shall be included for purposes of determining compliance with paragraph (d)(14)(iii)(D) of this section.

(15) Operating a travel agency provided that the travel agency is operated in connection with financial services offered abroad by the investor or others;

(16) Underwriting life, annuity, pension fund-related, and other types of insurance, where the associated risks have been previously determined by the Board to be actuarially predictable, provided however that:

(i) Investments in, and loans and extensions of credit (other than loans and extensions of credit fully secured in accordance with the requirements of section 23A of the FRA (12 U.S.C. 371c) or with such other standards as the Board may require) to, the company by the investor or its affiliates are deducted from the capital of the investor;¹³ and

(ii) Activities conducted directly or indirectly by a subsidiary of a U.S. insured bank are excluded from the authority of this paragraph.

(17) Acting as a futures commission merchant for financial instruments of the type, and on exchanges, that the Board has previously approved, provided however that:

(i) Activities are conducted in accordance with the standards set forth in § 225.25(b)(18) of the Board's Regulation Y (12 CFR 225.25(b)(18)); and

(ii) Prior approval must be obtained for activities conducted on an exchange that requires members to guarantee or otherwise contract to cover losses suffered by other members.

with portfolio investments for purposes of determining compliance with the aggregate limits in paragraph (b)(1)(iii)(A)(2) of this section.

¹³Fifty percent of such capital deduction shall be from Tier 1 capital.

(18) Acting as principal or agent in swap transactions¹⁴ subject to any limitations applicable to state member banks under the Board's Regulation H (12 CFR part 208), except that where such activities involve contracts related to a commodity, such contracts must provide an option for cash settlement and the option must be exercised upon settlement.

(19) Engaging in activities that the Board has determined in Regulation Y (12 CFR 225.25(b)) are closely related to banking under section 4(c)(8) of the BHC Act; and

(20) With the Board's specific approval, engaging in other activities that the Board determines are usual in connection with the transaction of the business of banking or other financial operations abroad and are consistent with the FRA or the BHC Act.

(e) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this section; however, they shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

(f) *Investments made through debt-for-equity conversions—(1) Permissible investments.* A bank holding company may make investments through the conversion of sovereign or private debt obligations of an eligible country, either through direct exchange of the debt obligations for the investment or by a payment for the debt in local currency, the proceeds of which, including an additional cash investment not exceeding in the aggregate more than 10 percent of the fair value of the debt obligations being converted as part of such investment, are used to purchase the following investments:

(i) *Public sector companies.* A bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interests in) any foreign company located in an eligible country if the shares are acquired from the government of the eligible country

or from its agencies or instrumentalities.

(ii) *Private sector companies.* A bank holding company may acquire up to and including 40 percent of the shares, including voting shares, of (or other ownership interests in) any other foreign company located in an eligible country subject to the following conditions:

(A) A bank holding company may acquire more than 25 percent of the voting shares of the foreign company only if another shareholder or control group of shareholders unaffiliated with the bank holding company holds a larger block of voting shares of the company;

(B) The bank holding company and its affiliates may not lend or otherwise extend credit to the foreign company in amounts greater than 50 percent of the total loans and extensions of credit to the foreign company; and

(C) The bank holding company's representation on the board of directors or on management committees of the foreign company may be no more than proportional to its shareholding in the foreign company.

(2) *Investments by bank subsidiary of bank holding company.* Upon application, the Board may permit an indirect investment to be made pursuant to this paragraph through an insured bank subsidiary of the bank holding company where the bank holding company demonstrates that such ownership is consistent with the purposes of the FRA. In granting its consent, the Board may impose such conditions as it deems necessary or appropriate to prevent adverse effects, including prohibiting loans from the bank to the company in which the investment is made.

(3) *Divestiture—(i) Time limits for divestiture.* The bank holding company shall divest the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (unless the retention of the shares or other ownership interest is otherwise permissible at the time required for divestiture) within the longer of:

(A) Ten years from the date of acquisition of the investment except that the Board may extend such period if, in

¹⁴Swap transactions involving equity instruments are separately authorized under paragraph (d)(14) of this section.

the Board's judgment, such an extension would not be detrimental to the public interest; or

(B) Two years from the date on which the bank holding company is permitted to repatriate in full the investment in the foreign company;

Provided however that, in either event divestiture occurs within fifteen years of the date of the acquisition.

(ii) *Report to the Board.* The bank holding company shall report to the Board on its plans for divesting an investment made under this paragraph two years prior to the final date for divestiture, in a manner to be prescribed by the Board.

(iii) *Other conditions requiring divestiture.* All investments made pursuant to this paragraph are subject to paragraphs (b)(4)(i)(A) and (B) of this section requiring prompt divestiture (unless the Board upon application authorizes retention) if the company invested in engages in impermissible business in the United States that exceeds in the aggregate 10 percent of the company's consolidated assets or revenues calculated on an annual basis; provided however that, such company may not engage in activities in the United States that consist of banking or financial operations (as defined in § 211.23(f)(5)(iii)(B) of this chapter), or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act, except under regulations of the Board or with the prior approval of the Board.

(4) *Investment procedures—(i) General consent.* Subject to the other limitations of this paragraph, the Board grants its general consent for investments made under this paragraph if the total amount invested does not exceed the greater of \$25 million or 1 percent of the Tier 1 capital of the investor.

(ii) All other investments shall be made in accordance with the procedures of paragraph (c) of this section requiring prior notice or specific consent.

(5) *Conditions—(i) Name.* Any company acquired pursuant to this paragraph shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates.

(ii) *Confidentiality.* Neither the bank holding company nor its affiliates shall

provide to any company acquired pursuant to this paragraph any confidential business information or other information concerning customers that are engaged in the same or related lines of business as the company.

§ 211.6 Lending limits and capital requirements.

(a) *Acceptances of Edge corporations—(1) Limitations.* An Edge corporation shall be and remain fully secured for:

(i) All acceptances outstanding in excess of 200 percent of its Tier 1 capital; and

(ii) All acceptances outstanding for any one person in excess of 10 percent of its Tier 1 capital; *Provided however that*, these limitations apply only to acceptances of the types described in paragraph 7 of section 13 of the FRA (12 U.S.C. 372).

(2) *Exceptions.* These limitations do not apply if the excess represents the international shipment of goods and the Edge corporation is:

(i) Fully covered by primary obligations to reimburse it that are guaranteed by banks or bankers; or

(ii) Covered by participation agreements from other banks, as such agreements are described in § 250.165 of this chapter.

(b) *Loans and extensions of credit to one person—(1) Limitations.* Except as the Board may otherwise specify:

(i) The total loans and extensions of credit outstanding to any person by an Edge corporation engaged in banking and its direct or indirect subsidiaries may not exceed 15 percent of the Edge corporation's Tier 1 capital;¹⁵ and

(ii) The total loans and extensions of credit to any person by a foreign bank or Edge corporation subsidiary of a member bank, and by majority-owned subsidiaries of a foreign bank or Edge corporation, when combined with the total loans and extensions of credit to the same person by the member bank and its majority-owned subsidiaries, may not exceed the member bank's limitation on loans and extensions of credit to one person.

¹⁵For purposes of this subsection, *subsidiary* includes subsidiaries controlled by the Edge corporation but does not include companies otherwise controlled by affiliates of the Edge corporation.