

Code of Federal Regulations

Title 12. Banks and Banking

Chapter II. Federal Reserve System

Subchapter A. Board of Governors of the Federal Reserve System

Part 225. Bank Holding Companies and Change in Bank Control (Regulation Y) (Refs & Annos)

Interpretations

Subpart J. Merchant Banking Investments (Refs & Annos)

12 C.F.R. § 225.170

§ 225.170 What type of investments are permitted by this subpart, and under what conditions may they be made?

Effective: March 29, 2005

[Currentness](#)

(a) What types of investments are permitted by this subpart? Section 4(k)(4)(H) of the Bank Holding Company Act ([12 U.S.C. 1843\(k\)\(4\)\(H\)](#)) and this subpart authorize a financial holding company, directly or indirectly and as principal or on behalf of one or more persons, to acquire or control any amount of shares, assets or ownership interests of a company or other entity that is engaged in any activity not otherwise authorized for the financial holding company under section 4 of the Bank Holding Company Act. For purposes of this subpart, shares, assets or ownership interests acquired or controlled under [section 4\(k\)\(4\)\(H\)](#) and this subpart are referred to as “merchant banking investments.” A financial holding company may not directly or indirectly acquire or control any merchant banking investment except in compliance with the requirements of this subpart.

(b) Must the investment be a bona fide merchant banking investment? The acquisition or control of shares, assets or ownership interests under this subpart is not permitted unless it is part of a bona fide underwriting or merchant or investment banking activity.

(c) What types of ownership interests may be acquired? Shares, assets or ownership interests of a company or other entity include any debt or equity security, warrant, option, partnership interest, trust certificate or other instrument representing an ownership interest in the company or entity, whether voting or nonvoting.

(d) Where in a financial holding company may merchant banking investments be made? A financial holding company and any subsidiary (other than a depository institution or subsidiary of a depository institution) may acquire or control merchant banking investments. A financial holding company and its subsidiaries may not acquire or control merchant banking investments on behalf of a depository institution or subsidiary of a depository institution.

(e) May assets other than shares be held directly? A financial holding company may not under this subpart acquire or control assets, other than debt or equity securities or other ownership interests in a company, unless:

(1) The assets are held by or promptly transferred to a portfolio company;

(2) The portfolio company maintains policies, books and records, accounts, and other indicia of corporate, partnership or limited liability organization and operation that are separate from the financial holding company and limit the legal liability of the financial holding company for obligations of the portfolio company; and

(3) The portfolio company has management that is separate from the financial holding company to the extent required by [§ 225.171](#).

(f) What type of affiliate is required for a financial holding company to make merchant banking investments? A financial holding company may not acquire or control merchant banking investments under this subpart unless the financial holding company qualifies under at least one of the following paragraphs:

(1) Securities affiliate. The financial holding company is or has an affiliate that is registered under the Securities Exchange Act of 1934 ([15 U.S.C. 78c, 78o, 78o-4](#)) as:

(i) A broker or dealer; or

(ii) A municipal securities dealer, including a separately identifiable department or division of a bank that is registered as a municipal securities dealer.

(2) Insurance affiliate with an investment adviser affiliate. The financial holding company controls:

(i) An insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance), or providing and issuing annuities; and

(ii) A company that:

(A) Is registered with the Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940 ([15 U.S.C. 80b-1 et seq.](#)); and

(B) Provides investment advice to an insurance company.

SOURCE: [49 FR 818](#), Jan. 5, 1984; [51 FR 36211](#), Oct. 9, 1986; [55 FR 6790](#), Feb. 27, 1990; [55 FR 27771](#), July 5, 1990; [55 FR 47743](#), Nov. 15, 1990; [57 FR 21207](#), May 19, 1992; [57 FR 22426](#), May 28, 1992; [57 FR 43890](#), Sept. 23, 1992; [57 FR 60720](#), Dec. 22, 1992; [57 FR 62180](#), Dec. 30, 1992; [58 FR 4074](#), Jan. 13, 1993; [58 FR 7980](#), Feb. 11, 1993; [58 FR 47209](#), Sept. 8, 1993; [59 FR 22968](#), May 4, 1994; [59 FR 29500](#), June 7, 1994; [59 FR 62993](#), Dec. 7, 1994; [59 FR 63244](#), Dec. 8, 1994; [59 FR 65474](#), Dec. 20, 1994; [63 FR 30370](#), June 4, 1998; [63 FR 46522](#), Sept. 1, 1998; [65 FR 14438](#), March 17, 2000; [65 FR 16472](#), March 28, 2000; [66 FR 414](#), Jan. 3, 2001; [66 FR 8484](#), Jan. 31, 2001; [66 FR 8636](#), Feb. 1, 2001; [70 FR 15753](#), March 29, 2005; [76 FR 8275](#), Feb. 14, 2011; [78 FR 76527](#), Dec. 18, 2013; [79 FR 64040](#), Oct. 27, 2014; [80 FR 32681](#), June 9, 2015; [80 FR 75424](#), Dec. 2, 2015, unless otherwise noted.

AUTHORITY: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

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