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persons not affiliated with the insured State bank; or

(B) The transactions are pursuant to a benefit or compensation program that is widely available to employees of the bank, and that does not give preference to the bank's executive officers, directors, principal shareholders or related interests of such persons over other bank employees.

(iv) *Anti-tying restriction.* Neither the insured State bank nor the majority-owned subsidiary may require a customer to either buy any product or use any service from the other as a condition of entering into a transaction.

(4) *Collateralization requirements.* (i) An insured State bank is prohibited from making an investment in a subsidiary subject to this paragraph (d) unless such transaction is fully collateralized at the time the transaction is entered into. No insured State bank may accept a low quality asset as collateral. An extension of credit is fully collateralized if it is secured at the time of the transaction by collateral having a market value equal to at least:

(A) 100 percent of the amount of the transaction if the collateral is composed of:

(1) Obligations of the United States or its agencies;

(2) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(3) Notes, drafts, bills of exchange or bankers acceptances that are eligible for rediscount or purchase by the Federal Reserve Bank; or

(4) A segregated, earmarked deposit account with the insured State bank;

(B) 110 percent of the amount of the transaction if the collateral is composed of obligations of any State or political subdivision of any State;

(C) 120 percent of the amount of the transaction if the collateral is composed of other debt instruments, including receivables; or

(D) 130 percent of the amount of the transaction if the collateral is composed of stock, leases, or other real or personal property.

(ii) An insured State bank may not release collateral prior to proportional payment of the extension of credit; however, collateral may be substituted

if there is no diminution of collateral coverage.

(5) *Investment and transaction limits extended to insured State bank subsidiaries.* For purposes of applying paragraphs (d)(2) through (d)(4) of this section, any reference to "insured State bank" means the insured State bank and any subsidiaries of the insured State bank which are not themselves subject under this part or FDIC order to the restrictions of this paragraph (d).

(e) *Capital requirements.* If specifically required by this part or by FDIC order, any insured State bank that wishes to conduct or continue to conduct as principal activities through a subsidiary that are not permissible for a subsidiary of a national bank must:

(1) Be well-capitalized after deducting from its tier one capital the investment in equity securities of the subsidiary as well as the bank's pro rata share of any retained earnings of the subsidiary;

(2) Reflect this deduction on the appropriate schedule of the bank's consolidated report of income and condition; and

(3) Use such regulatory capital amount for the purposes of the bank's assessment risk classification under part 327 of this chapter and its categorization as a "well-capitalized", an "adequately capitalized", an "undercapitalized", or a "significantly undercapitalized" institution as defined in §325.103(b) of this chapter, provided that the capital deduction shall not be used for purposes of determining whether the bank is "critically undercapitalized" under part 325 of this chapter.

[63 FR 66326, Dec. 1, 1998, as amended at 66 FR 1028, Jan. 5, 2001]

§ 362.5 Approvals previously granted.

(a) *FDIC consent by order or notice.* An insured State bank that previously filed an application or notice under part 362 in effect prior to January 1, 1999 (see 12 CFR part 362 revised as of January 1, 1998), and obtained the FDIC's consent to engage in an activity or to acquire or retain a majority-owned subsidiary engaging as principal in an activity or acquiring and retaining any investment that is prohibited

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under this subpart may continue that activity or retain that investment without seeking the FDIC's consent, provided that the insured State bank and its subsidiary, if applicable, continue to meet the conditions and restrictions of the approval. An insured State bank which was granted approval based on conditions which differ from the requirements of § 362.4(c)(2), (d) and (e) will be considered to meet the conditions and restrictions of the approval relating to being an eligible subsidiary, meeting investment and transactions limits, and meeting capital requirements if the insured State bank and subsidiary meet the requirements of § 362.4(c)(2), (d) and (e). If the majority-owned subsidiary is engaged in real estate investment activities not exceeding 2 percent of the tier one capital of a bank and meeting the other conditions of § 362.4(b)(5)(i), the majority-owned subsidiary's compliance with § 362.4(c)(2) under the preceding sentence may be pursuant to the modifications authorized by § 362.4(b)(5)(i). Once an insured State bank elects to comply with § 362.4 (c)(2), (d), and (e), it may not revert to the corresponding provisions of the approval order.

(b) *Approvals by regulation—*

(1)–(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.

[63 FR 66326, Dec. 1, 1998, as amended at 66 FR 1028, Jan. 5, 2001]

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. This subpart contains the required prudential separations between certain securities underwriting affiliates and insured state nonmember banks. The standards only will apply to affiliates of insured state nonmember banks that are not controlled by an entity that is supervised by a federal banking agency.

[66 FR 1028, Jan. 5, 2001]