

## Proposed Subpart A - Brief Description of Changes vs. Current Regulations

EQUITY INVESTMENTS	
Equity Investment	Change
<b>Prohibition</b> § 362.3(a)(1)	The provision that no insured state bank may acquire or retain an equity security in an amount not permissible for a national bank is deleted.
<b>Grandfathered Investments - Preferred &amp; Common Stock and Shares of Inv. Companies</b> § 362.3(a)(2)(iii)	Notice requirement for grandfathered equities is deleted.
	Divestiture language regarding grandfathered equities is deleted.

ACTIVITIES	
Activity	Change
<b>Savings Bank Life Insurance &amp; Grandfathered Insurance Underwriting</b> § 362.3(b)(2)(ii)	Customer disclosures conforming with the Interagency Statement on the Retail Sales of NDIP replace the similar disclosures currently required by regulation.
	Department standards are now reflected in the regulatory text as “core standards” rather than being in the definitions section.
<b>Acquiring and Retaining Adjustable Rate &amp; Money Market Preferred Stock</b> § 362.3(b)(2)(iii)	Limitation is proposed to be based on “tier one capital” vs. “total capital.”
<b>Activities Closely Related to Banking</b> § 362.3(b)(2)(iv)	The regulatory exception has been clarified to state that the provision does not authorize an insured state bank engaged in real estate leasing to hold the leased property for more than two years at the end of the lease and does not authorize public welfare investments of a type that are not permissible for a national bank.

SUBSIDIARIES	
Activity	Change
<b>Grandfathered Insurance Underwriting</b>  § 362.4(b)(2)(i)	Threshold has been changed from being well-capitalized to being well-capitalized <u>after deducting</u> its investment in the subsidiary.
	“Bona fide subsidiary” standard is replaced with “eligible subsidiary.” As a result, the following new provisions are imposed. The subsidiary must have: <ol style="list-style-type: none"> <li>1. only one business purpose;</li> <li>2. a current, appropriate business plan;</li> <li>3. adequate management; and</li> <li>4. an adequate operational and managerial infrastructure.</li> </ol> However, unlike the current § 362 “bona fide subsidiary,” there is no requirement for separate employees and the subsidiary is no longer required to have a majority of officers independent from the bank as long as the chief executive officer is independent.
	Customer disclosures conforming with the Interagency Statement on the Retail Sales of NDIP replace the disclosures currently required by regulation.
<b>Majority-owned Subsidiaries Owning a Control Interest</b>  § 362.4(b)(3)	This exception is streamlined and now requires a control interest. Interests representing less than control must fit into the parameters of the separate exception for investments in equity securities. Alternatively, an application may be submitted to the FDIC.
	The regulatory exception has been clarified to state that it does not authorize an insured state bank engaged in real estate leasing to hold the leased property for more than two years at the end of the lease and does not authorize the acquisition of savings association stock.
<b>Majority-owned Subsidiaries Owning Equity Securities that Do Not Represent a Control Interest</b>  § 362.4(b)(4)	Combines two current exceptions: 1) bank stock, and 2) grandfathered equity investments and allows a subsidiary of an insured state bank to hold equity securities if the bank deducts its investment in the subsidiary from tier one capital and the subsidiary <ol style="list-style-type: none"> <li>1. does not control the issuer;</li> <li>2. limits its stock investment to no more than 10% of the issuer; and</li> <li>3. does not pursue active short-term trading.</li> </ol>
	Bank stock expanded to include thrift stock, bank holding company stock, and savings and loan holding company stock.
	Expands the equity investment option to allow <u>all</u> banks (not just grandfathered entities), when eligible, to purchase listed stock through a majority-owned subsidiary.
	Bank must now deduct its equity investment from tier one capital.
	The proposal limits the bank to one subsidiary engaged in this activity.
	Various transaction limitations are now imposed. The bank cannot: <ol style="list-style-type: none"> <li>1. lend to the subsidiary;</li> <li>2. purchase debt securities of the subsidiary; or</li> <li>3. originate any other transaction benefiting the majority-owned subsidiary.</li> </ol>
<b>Majority-owned subsidiaries conducting real estate investment activities</b>  § 362.4(b)(5)(i)	A notice procedure is created for real estate investment activities conducted through a majority-owned subsidiary if : <ol style="list-style-type: none"> <li>(1) the bank meets core eligibility standards;</li> <li>(2) the subsidiary meets the eligible subsidiary standards;</li> <li>(3) the bank complies with the investment and transaction limitations; and</li> <li>(4) the bank is well capitalized after deducting its investment in the subsidiary.</li> </ol>

<p><b>Majority-owned subsidiaries conducting real estate investment activities</b></p> <p><i>(continued)</i></p>	<p>A notice procedure is created for real estate investment activities conducted through a majority-owned subsidiary when the bank’s investment in the subsidiary does not exceed 2% of the bank’s tier one capital if</p> <ol style="list-style-type: none"> <li>(1) the bank has only one such subsidiary;</li> <li>(2) the bank’s investment in the subsidiary does not include any loans to the subsidiary or debt purchased from the subsidiary;</li> <li>(3) the bank meets core eligibility standards;</li> <li>(4) the bank is well capitalized after deducting its investment in the subsidiary; and</li> <li>(5) the subsidiary meets the eligible subsidiary standards except that the subsidiary does not have to be physically distinct from the bank, does not need a separate chief executive officer or separate board of directors from the bank, and does not need to maintain separate subsidiary policies.</li> </ol>
<p><b>Majority-owned Subsidiaries Conducting Securities Underwriting and Distribution Activities</b></p> <p>§ 362.4(b)(5)(ii)</p>	<p>Provisions regarding securities underwriting and distribution would be moved from § 337.4 to § 362.</p> <p>The regulatory prohibitions have been eliminated.</p> <p>The management experience standard and prohibition of participation by individuals subject to statutory disqualification have been eliminated. Additionally, the requirement that a subsidiary be continuously involved in certain underwriting practices for 5-years prior to underwriting issues that are other than investment quality debt or equity securities is eliminated.</p> <p>The subsidiary must now be a <u>majority-owned</u> subsidiary and rather than simply being <u>controlled</u>.</p> <p>§ 337.4 “bona fide subsidiary” is replaced by the § 362 concept of an “eligible subsidiary”. The following differences result from this change:</p> <ol style="list-style-type: none"> <li>1. there is no requirement for separate employees; and</li> <li>2. the subsidiary and the bank can share common officers, as long as the CEO is independent.</li> </ol> <p>The proposed capital standard is that the bank must be well-capitalized after deducting its investment.</p> <p>The proposal eliminates the five-year phase-in period limiting the securities activities of the subsidiary (limits on activities concerning issues that are other than investment quality debt or equity securities).</p> <p>Bank must now be an “eligible depository institution.” There was no such requirement previously.</p> <p>Prior notice period reduced from 60 days to 30 days.</p>
<p><b>Eligible Depository Institutions</b></p> <p>§ 362.4(c)(1)</p>	<p>An eligible depository institution is one that</p> <ol style="list-style-type: none"> <li>(1) has been chartered and operating for 3 or more years;</li> <li>(2) has a composite overall rating of 1 or 2;</li> <li>(3) has a management component rating of 1 or 2;</li> <li>(4) has a satisfactory or better CRA rating;</li> <li>(5) has a compliance rating of 1 or 2; and</li> <li>(6) is not subject to any formal or informal enforcement action.</li> </ol>
<p><b>Eligible Subsidiary</b></p> <p>§ 362.4(c)(2)</p>	<p>An eligible subsidiary is one that</p> <ol style="list-style-type: none"> <li>(1) has adequate capital;</li> <li>(2) is physically distinct from the bank;</li> <li>(3) maintains separate accounting and other records;</li> <li>(4) observes separate business formalities such as board meetings;</li> <li>(5) has a separate chief executive officer who is not employed by the bank;</li> <li>(6) has a majority of its board who are not directors or officers of the bank;</li> <li>(7) conducts business pursuant to independent policies designed to inform customers that the subsidiary and the bank are separate;</li> <li>(8) has only one business purpose;</li> <li>(9) has a current business plan;</li> <li>(10) has qualified management for its type of operation; and</li> <li>(11) has policies and procedures to implement internal risk management controls.</li> </ol>

<b>Investment and Transaction Limits</b> § 362.4(d)	Individual and aggregate limits restricting the depository institution’s ability to make investments in a subsidiary are applicable if required by regulation or FDIC order. While this requirement is similar to § 23A which applies to all affiliates, it differs because it does not apply to subsidiaries unless specifically imposed.
<b>Investment Limits</b> § 362.4(d)(2)	Investment in one subsidiary subject to this subsection may not exceed 10% of tier one capital.  The depository institution’s investments in all subsidiaries conducting the <i>same activity</i> (and subject to this subsection) may not exceed 20% of tier one capital. Again, this requirement differs from § 23A because only those investments in subsidiaries subject to the limits by regulation or FDIC order are counted within the 20% aggregate investment.  Another important distinction is that the 20% limit is applied by <i>activity</i> . It is not an aggregate investment limit for all subsidiaries subject to the individual limit. For example, an insured depository institution could have 20% of tier one capital invested in two or more subsidiaries conducting real estate investment activities, and an additional 20% of tier one capital invested in two or more subsidiaries engaging in securities underwriting and distribution.
Equity Capital Treatment	The “investment” subject to these limits does not include the depository institution’s equity investment (capital stock, surplus, and retained earnings). § 23A includes the amount of stock held by an institution in the investment limitations. However, § 23A does not require any corresponding regulatory capital deduction.
Capital Standard Against Which Limits are Determined	The standard against which the investment limits are calculated is tier one capital, unlike the § 23A limits which are measured against the sum of the bank’s total capital plus the ineligible portion of its allowance for loan and lease losses.
Investment Definition	“Investments” subject to the investment limits include only the following items: 1. extensions of credit by the depository institution to the subsidiary; 2. debt securities issued by the subsidiary and owned by the depository institution; 3. extensions of credit by the depository institution to third parties that are collateralized by securities issued by the subsidiary; and 4. extensions of credit by the depository institution to third parties for the purpose of making a direct investment in the subsidiary, making an investment in which the subsidiary has an interest, or which is used for the benefit of, or transferred to, the subsidiary.
Items Excluded from the Investment	The term “investment” does not include the following items: 1. extensions of credit by the depository institution to finance sales of assets by the subsidiary which do not involve more than the normal degree of risk of repayment and are extended on terms that are substantially similar to those prevailing at the time for comparable transactions with or involving unaffiliated persons or companies; 2. extensions of credit by the depository institution to the subsidiary that are fully collateralized by government securities; or 3. extensions of credit by the depository institution to the subsidiary that are fully collateralized by a segregated deposit account in the institution.
<b>Transaction Requirements</b> § 362.4(d)(3)	All transactions between the depository institution and a subsidiary subject to this subsection must be on terms and conditions that are substantially the same as those prevailing at the time for comparable transactions with unaffiliated parties.
Prohibition on Purchasing Low-Quality Assets	An insured depository institution is prohibited from purchasing low quality assets from a subsidiary.
Anti-tying	Neither the insured depository institution, nor the subsidiary, may condition a transaction with a customer by requiring the customer to buy a product or service from the other.

<b>Insider Transactions</b>	Transactions involving the subsidiary's activities between the insured depository institution or its subsidiary and the bank's executive officers, directors, principal shareholders, or the related interests of these individuals must be on an arm's length basis.
<b>Collateralization Requirements</b> § 362.4(d)(4)	Extensions of credit to or for the benefit of the subsidiary must be fully collateralized at the time of the transaction.
<b>Subsidiary-to-subsidiary Transactions</b> § 362.4(d)(5)	For purposes of applying the investment limits, transaction requirements, and collateralization requirements, the insured depository institution includes any subsidiary of the insured depository institution that is not itself subject under this part or FDIC order to the restrictions of § 362.4(d).
<b>Capital Requirements</b> § 362.4(e)	The bank must be well-capitalized after deducting its investment in the equity securities of a subsidiary subject to this subsection by regulation or FDIC order. This deduction must be reflected on the appropriate schedule of the bank's call reports and the net regulatory capital amount will be used for purposes of the bank's risk assessment classification under Part 327 and its categorization under subsection 325.103(b). However, the net amount will not be used in determining whether the bank is "critically capitalized" under Part 325.

### Proposed Subpart B - Brief Description of Changes vs. Current Regulations

<b>Majority-owned subsidiaries conducting real estate investment activities</b> § 362.7(a)	<p>Subsidiaries of insured state nonmember banks conducting real estate investment activities that are permissible for a subsidiary of a national bank but are not permissible for the national bank itself must</p> <ol style="list-style-type: none"> <li>(1) meet the requirements for filing a notice and file a notice without objection as required in § 362.4(b)(5)(i); or</li> <li>(2) file an application and receive approval to engage in the activity.</li> </ol>
<b>Affiliation with securities companies</b> § 362.7(b)	<p>Insured state nonmember banks affiliated with a company that is not treated as a bank holding company are prohibited from becoming or remaining affiliated with any company that engages in securities distribution or underwriting that is not permissible for a national bank unless</p> <ol style="list-style-type: none"> <li>(1) the securities business of the affiliate is physically distinct from the operations of the bank;</li> <li>(2) the securities affiliate has a chief executive officer that is not an officer of the bank;</li> <li>(3) a majority of the affiliate's board are not directors, officers or employees of the bank;</li> <li>(4) the affiliate conducts business in a manner that informs customers that the affiliate is separate from the bank;</li> <li>(5) the bank adopts policies to govern participation in financing transactions underwritten by the affiliate;</li> <li>(6) the bank does not express an opinion on the advisability of the purchase or sale of securities underwritten by the affiliate unless the customer receives written disclosure of the affiliate relationship;</li> <li>(7) the bank does not purchase as principal or fiduciary during the underwriting any securities underwritten by the affiliate unless the bank's board gives prior approval;</li> <li>(8) the bank does not condition any loan on an agreement with the bank's affiliate to underwrite or distribute securities for the loan customer;</li> <li>(9) the bank does not condition any loan or service to a person on the requirement that the person purchase a security underwritten or distributed by the affiliate; and</li> <li>(10) the bank complies with the investment and transaction limitations of § 362.4(d).</li> </ol>