

Conformance Period

3. How do the requirements of section 13 of the BHC Act and the final rule apply to a banking entity during the conformance period? For instance, must a banking entity deduct its investment in a covered fund from its tier 1 capital prior to the end of the conformance period?

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The Board extended the statute's conformance period until July 21, 2015 ("Board Conformance Order").¹ The Board also has issued a statement of policy in which the Board clarified the activities and investments that are permissible during the conformance period.²

As explained in the Board Conformance Order, a banking entity must conform all of its proprietary trading activities and covered fund activities and investments to the prohibitions and requirements of section 13 and the final rule by no later than the end of the conformance period. During the conformance period, a banking entity is expected to engage in good-faith efforts, appropriate for its activities and investments that will result in the conformance of all of its activities and investments to the requirements of section 13 and the final rule no later than the end of the conformance period. Good-faith efforts include evaluating the extent to which the banking entity is engaged in activities and investments that are covered by section 13 and the final rule, as well as developing and implementing a conformance plan that is appropriately specific about how the banking entity will fully conform all of its covered activities and investments by the end of the conformance period. In addition, under the Board Conformance Order, banking entities that have stand-alone proprietary trading operations are expected to promptly terminate or divest those operations. Moreover, banking entities should not expand activities and make investments during the conformance period with the expectation that additional time to conform those activities or investments will be granted.

As an example of how the conformance period works in practice, section 13(d)(4) of the BHC Act and § 351.12(d) of the final rule require a banking entity to deduct from the banking entity's tier 1 capital, as determined under § 351.12(c)(2) of the final rule, its permitted investments in all covered funds. A banking entity would not be required to make this deduction until the end of the conformance period, which is currently July 21, 2015. As noted above, a banking entity is expected to engage in good faith efforts during the conformance period so that it can comply with this requirement no later than the end of the conformance period. Notably, as specified in the final rule, certain metrics reporting requirements will be in place before the end of the conformance period for banking entities with \$50 billion or greater in trading assets and liabilities.

¹ See Board Order Approving Extension of Conformance Period, *available at* <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131210b1.pdf>.

² See Statement of Policy Regarding the Conformance Period for Entities Engaged in Proprietary Trading or Private Equity Fund and Hedge Fund Activities, 77 Fed. Reg. 33,949 (June 8, 2012).