

12 CFR - CHAPTER II - PART 211

§ 211.9 Investment procedures.

(a) *General provisions.* 5 Direct and indirect investments shall be made in accordance with the general consent, limited general consent, prior notice, or specific consent procedures contained in this section.

5 When necessary, the provisions of this section relating to general consent and prior notice constitute the Board's approval under section 25A(8) of the FRA (12 U.S.C. 615) for investments in excess of the limitations therein based on capital and surplus.

(1) *Minimum capital adequacy standards.* Except as the Board may otherwise determine, in order for an investor to make investments pursuant to the procedures set out in this section, the investor, the bank holding company, and the member bank shall be in compliance with applicable minimum standards for capital adequacy set out in the Capital Adequacy Guidelines; provided that, if the investor is an Edge or agreement corporation, the minimum capital required is total and tier 1 capital ratios of 8 percent and 4 percent, respectively.

(2) *Composite rating.* Except as the Board may otherwise determine, in order for an investor to make investments under the general consent or limited general consent procedures of paragraphs (b) and (c) of this section, the investor and any parent insured bank must have received a composite rating of at least 2 at the most recent examination.

(3) *Board's authority to modify or suspend procedures.* The Board, at any time upon notice, may modify or suspend the procedures contained in this section with respect to any investor or with respect to the acquisition of shares of organizations engaged in particular kinds of activities.

(4) *Long-range investment plan.* Any investor may submit to the Board for its specific consent a long-range investment plan. Any plan so approved shall be subject to the other procedures of this section only to the extent determined necessary by the Board to assure safety and soundness of the operations of the investor and its affiliates.

(5) *Prior specific consent for initial investment.* An investor shall apply for and receive the prior specific consent of the Board for its initial investment under this subpart in its first subsidiary or joint venture, unless an affiliate previously has received approval to make such an investment.

(6) *Expiration of investment authority.* Authority to make investments granted under prior notice or specific consent procedures shall expire one year from the earliest date on which the authority could have been exercised, unless the Board determines a longer period shall apply.

(7) *Conditional approval; Access to information.* The Board may impose such conditions on authority granted by it under this section as it deems necessary, and may require termination of any activities conducted under authority of this subpart if an investor is unable to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.

(b) *General consent.* The Board grants its general consent for a well capitalized and well managed investor to make investments, subject to the following:

(1) *Well capitalized and well managed investor.* In order to qualify for making investments under authority of this paragraph (b), both before and immediately after the proposed investment, the investor, any parent insured bank, and any parent bank holding company shall be well capitalized and well managed.

(2) *Individual limit for investment in subsidiary.* In the case of an investment in a subsidiary, the total amount invested directly or indirectly in such subsidiary (in one transaction or a series of transactions) does not exceed:

(i) 10 percent of the investor's tier 1 capital, where the investor is a bank holding company; or

(ii) 2 percent of the investor's tier 1 capital, where the investor is a member bank; or

(iii) The lesser of 2 percent of the tier 1 capital of any parent insured bank or 10 percent of the investor's tier 1 capital, for any other investor.

(3) *Individual limit for investment in joint venture.* In the case of an investment in a joint venture, the total amount invested directly or indirectly in such joint venture (in one transaction or a series of transactions) does not exceed:

(i) 5 percent of the investor's tier 1 capital, where the investor is a bank holding company; or

(ii) 1 percent of the investor's tier 1 capital, where the investor is a member bank; or

(iii) The lesser of 1 percent of the tier 1 capital of any parent insured bank or 5 percent of the investor's tier 1 capital, for any other investor.

(4) *Individual limit for portfolio investment.* In the case of a portfolio investment, the total amount invested directly or indirectly in such company (in one transaction or a series of transactions) does not exceed the lesser of \$25 million, or

(i) 5 percent of the investor's tier 1 capital in the case of a bank holding company or its subsidiary, or Edge corporation engaged in banking; or

(ii) 25 percent of the investor's tier 1 capital in the case of an Edge corporation not engaged in banking.

(5) *Investment in a general partnership or unlimited liability company.* An investment in a general partnership or unlimited liability company may be made under authority of paragraph (b) of this section, subject to the limits set out in paragraph (c) of this section.

(6) *Aggregate investment limits -- (i) Investment limits.* All investments made, directly or indirectly, during the previous 12-month period under authority of this section, when aggregated with the proposed investment, shall not exceed:

(A) 20 percent of the investor's tier 1 capital, where the investor is a bank holding company;

(B) 10 percent of the investor's tier 1 capital, where the investor is a member bank; or

(C) The lesser of 10 percent of the tier 1 capital of any parent insured bank or 50 percent of the tier 1 capital of the investor, for any other investor.

(ii) *Downstream investments.* In determining compliance with the aggregate limits set out in this paragraph (b), 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.

(7) *Application of limits.* In determining compliance with the limits set out in this paragraph (b), an investor is not required to combine the value of all shares of an organization held in trading or dealing accounts under § 211.10(a)(15) of this part with investments in the same organization.

(c) *Limited general consent -- (1) Individual limit.* The Board grants its general consent for an investor that is not well capitalized and well managed to make an investment in a subsidiary or joint venture, or to make a portfolio investment, if the total amount invested directly or indirectly (in one transaction or in a series of transactions) does not exceed the lesser of \$25 million or:

(i) 5 percent of the investor's tier 1 capital, where the investor is a bank holding company;

(ii) 1 percent of the investor's tier 1 capital, where the investor is a member bank; or

(iii) The lesser of 1 percent of any parent insured bank's tier 1 capital or 5 percent of the investor's tier 1 capital, for any other investor.

(2) *Aggregate limit.* The amount of general consent investments made by any investor directly or indirectly under authority of this paragraph (c) during the previous 12-month period, when aggregated with the proposed investment, shall not exceed:

(i) 10 percent of the investor's tier 1 capital, where the investor is a bank holding company;

(ii) 5 percent of the investor's tier 1 capital, where the investor is a member bank; and

(iii) The lesser of 5 percent of any parent insured bank's tier 1 capital or 25 percent of the investor's tier 1 capital, for any other investor.

(3) *Application of limits.* In calculating compliance with the limits of this paragraph (c), the rules set forth in paragraphs (b)(6)(ii) and (b)(7) of this section shall apply.

(d) *Other eligible investments under general consent.* In addition to the authority granted under paragraphs (b) and (c) of this section, the Board grants its general consent for any investor to make the following investments:

(1) *Investment in organization equal to cash dividends.* Any investment in an organization in an amount equal to cash dividends received from that organization during the preceding 12 calendar months; and

(2) *Investment acquired from affiliate.* Any investment that is acquired from an affiliate at net asset value or through a contribution of shares.

(e) *Investments ineligible for general consent.* An investment in a foreign bank may not be made under authority of paragraphs (b) or (c) of this section if:

(1) After the investment, the foreign bank would be an affiliate of a member bank; and

(2) The foreign bank is located in a country in which the member bank and its affiliates have no existing banking presence.

(f) *Prior notice.* An investment that does not qualify for general consent under paragraph (b), (c), or (d) of this section may be made after the investor has given the Board 30 days' prior written notice, such notice period to commence at the time the notice is received, provided that:

(1) The Board may waive the 30-day period if it finds the full period is not required for consideration of the proposed investment, or that immediate action is required by the circumstances presented; and

(2) The Board may suspend the 30-day period or act on the investment under the Board's specific consent procedures.

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

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