Federal Reserve System

§ 225.173  How are investments in private equity funds treated under this subpart?

(a) What is a private equity fund? For purposes of this subpart, a "private equity fund" is any company that:

(1) Is formed for the purpose of and is engaged exclusively in the business of investing in shares, assets, and ownership interests of financial and non-financial companies for resale or other disposition;

(2) Is not an operating company;

(3) No more than 25 percent of the total equity of which is held, owned or controlled, directly or indirectly, by the financial holding company and its directors, officers, employees and principal shareholders;

(4) Has a maximum term of not more than 15 years; and

(5) Is not formed or operated for the purpose of making investments inconsistent with the authority granted under section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) or evading the limitations governing merchant banking investments contained in this subpart.

(b) What form may a private equity fund take? A private equity fund may be a corporation, partnership, limited liability company or other type of company that issues ownership interests in any form.

(c) What is the holding period permitted for interests in private equity funds?—(1) In general. A financial holding company may own, control or hold any interest in a private equity fund under this subpart and any interest in a portfolio company that is owned or controlled by a private equity fund in which the financial holding company owns or controls any interest under this subpart for the duration of the fund, up to a maximum of 15 years.

(2) Request to hold interest for longer period. A financial holding company may seek Board approval to own, control or hold an interest in or held through a private equity fund for a period longer than the duration of the fund in accordance with § 225.172(b) of this subpart.

(3) Application of rules. The rules described in § 225.172(b)(2) and (3) governing holding periods of interests acquired, transferred or previously held by a financial holding company apply to interests in, held through, or acquired from a private equity fund.

(d) How do the restrictions on routine management and operation apply to private equity funds and investments held through a private equity fund?—(1) Portfolio companies held through a private equity fund. A financial holding company may not routinely manage or operate a portfolio company that is owned or controlled by a private equity fund in which the financial holding company owns or controls any interest under this subpart, except as permitted under § 225.171(e).

(2) Private equity funds controlled by a financial holding company. A private equity fund that is controlled by a financial holding company may not routinely manage or operate a portfolio company, except as permitted under § 225.171(e).

(3) Private equity funds that are not controlled by a financial holding company. A private equity fund may routinely manage or operate a portfolio...
§ 225.174 What aggregate thresholds apply to merchant banking investments?

(a) In general. A financial holding company may not, without Board approval, directly or indirectly acquire any additional shares, assets or ownership interests under this subpart or make any additional capital contribution to any company the shares, assets or ownership interests of which are held by the financial holding company under this subpart if the aggregate carrying value of all merchant banking investments held by the financial holding company under this subpart exceeds:

1. 30 percent of the Tier 1 capital of the financial holding company; or
2. After excluding interests in private equity funds, 20 percent of the Tier 1 capital of the financial holding company.

(b) How do these thresholds apply to a private equity fund? Paragraph (a) of this section applies to the interest acquired or controlled by the financial holding company under this subpart in a private equity fund. Paragraph (a) of this section does not apply to any interest in a company held by a private equity fund or to any interest held by a person that is not affiliated with the financial holding company.

(c) How long do these thresholds remain in effect? This § 225.174 shall cease to be effective on the date that a final rule issued by the Board that specifically addresses the appropriate regulatory capital treatment of merchant banking investments becomes effective.

§ 225.175 What risk management, record keeping and reporting policies are required to make merchant banking investments?

(a) What internal controls and records are necessary?—(1) General. A financial holding company, including a private equity fund controlled by a financial holding company, that makes investments under this subpart must establish and maintain policies, procedures, records and systems reasonably designed to:

(i) Monitor and assess the carrying value, market value and performance of each investment and the aggregate portfolio;

(ii) Identify and manage the market, credit, concentration and other risks associated with such investments;

(iii) Identify, monitor and assess the terms, amounts and risks arising from transactions and relationships (including contingent fees or contingent interests) with each company in which the financial holding company holds an interest under this subpart;

(iv) Ensure the maintenance of corporate separateness between the financial holding company and each company in which the financial holding company holds an interest under this subpart;

(v) Ensure compliance with this part and any other provisions of law governing transactions and relationships.