§ 1501.2 What activities has the Secretary determined to be financial in nature or incidental to a financial activity?

(a) Activities permitted under section 5136A(b)(3) of the Revised Statutes (12 U.S.C. 24a(b)(3)). (1) The following types of activities are financial in nature or incidental to a financial activity when conducted pursuant to a determination by the Secretary under paragraph (a)(2) of this section:

(i) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;

(ii) Providing any device or other instrumentality for transferring money or other financial assets; and

(iii) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(2) Review of specific activities. (i) Is a specific request required? A financial subsidiary that wishes to engage in an activity that is not otherwise permissible for a financial subsidiary must obtain a determination from the Secretary that the activity is permitted under paragraph (a)(1).

(ii) Consultation with the Board of Governors of the Federal Reserve System. After receiving a request under this section, the Secretary will provide the Board of Governors of the Federal Reserve System (Board) with a copy of the request and consult with the Board in accordance with section 5136A(b)(1)(B)(i) of the Revised Statutes (12 U.S.C. 24a(b)(1)(B)(i)).

(iii) Secretary action on requests. After consultation with the Board, the Secretary will promptly make a written determination regarding whether the specific activity described in the request is included in an activity category listed in paragraph (a)(1) of this section and is therefore either financial in nature or incidental to a financial activity.

(3) What factors will the Secretary consider? In evaluating a request made under this section, the Secretary will take into account the factors listed in connection with authorizing the activity.
§ 1501.3 Comparable ratings requirement for national banks among the second 50 largest insured banks.

(a) Scope and purpose. Section 5136A of the Revised Statutes permits a national bank that is within the second 50 largest insured banks to own or control a financial subsidiary only if, among other requirements, the bank satisfies the eligible debt requirement set forth in section 5136A or an alternative criteria jointly established by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. This section establishes the alternative criteria that a national bank among the second 50 largest insured banks may meet, which criteria is comparable to and consistent with the purposes of the eligible debt requirement established by section 5136A.

(b) Alternative criteria. A national bank satisfies the alternative criteria referenced in Section 5136A(a)(2)(E) of the Revised Statutes (12 U.S.C. 24a) and 12 CFR 5.39(g)(3) if the bank has a current long-term issuer credit rating from at least one nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.

(c) Definition of long-term issuer credit rating. A “long-term issuer credit rating” is a written opinion issued by a nationally recognized statistical rating organization of the bank’s overall capacity and willingness to pay on a timely basis its unsecured, dollar-denominated financial obligations maturing in not less than one year.

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