

Federal Deposit Insurance Corporation

§ 390.250

shall take possession of the savings association by taking possession of the principal office of the Federal or State savings association in accordance with the terms of the OCC's or State bank supervisor's, as appropriate, appointment.

(b) Upon taking possession, the conservator or receiver shall immediately:

(1) Take possession of the savings association's books, records and assets.

(2) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the conservator or receiver knows to be holding or in possession of assets of the savings association, that the conservator or receiver has succeeded to all rights, titles, powers and privileges of the savings associations.

(3) File with the Executive Secretary a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof.

(4) Post a notice on the door of the principal and other offices of the savings association in the form, if any, prescribed by the OCC or State bank supervisor, as appropriate.

(5) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer or director shall thereafter have or exercise any right, power, or privilege, or act in connection with any of the savings association's assets or property.

§ 390.241 Notice of appointment.

(a) When the OCC or State bank supervisor, as appropriate, issues an order for the appointment of a conservator or receiver, the FDIC will designate the persons or entities whose employees or agents must, before the conservator or receiver takes possession of the savings association:

(1) Give notice of the appointment to any officer or employee who is present in and appears to be in charge at the principal office of the savings association as determined by the FDIC.

(2) Serve a copy of the order for the appointment upon the savings association or upon the conservator by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association as determined by the FDIC; or

(ii) Handing a certified copy of the order of appointment to the previous conservator of the savings association, or to the officer or employee of the savings association, or to the previous conservator who is present in and appears to be in charge at the principal office of the savings association as determined by the FDIC.

(3) File with the Executive Secretary of the FDIC a statement that includes the date and time that notice of the appointment was given and service of the order of appointment was made.

(b) If the OCC or State bank supervisor, as appropriate, appoints a conservator or receiver under this subpart, the FDIC will immediately file a notice of the appointment for publication in the FEDERAL REGISTER.

Subpart O—Subordinate Organizations

§ 390.250 What does this subpart cover?

(a) The FDIC is issuing this subpart O pursuant to its general rulemaking and supervisory authority under the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, and its specific authority under section 18(m) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(m). This subpart applies to subordinate organizations of State savings associations. The FDIC may, at any time, limit a State savings association's investment in any of these entities, or may limit or refuse to permit any activities of any of these entities for supervisory, legal, or safety and soundness reasons.

(b) Notices under this subpart are applications for purposes of statutory and regulatory references to "applications." Any conditions that the FDIC imposes in approving any application are enforceable as a condition imposed in writing by the FDIC in connection with the granting of a request by a State savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

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§ 390.251 Definitions.

For purposes of this subpart:

Control has the same meaning as in part 391, subpart E.

GAAP-consolidated subsidiary means an entity in which a State savings association has a direct or indirect ownership interest and whose assets are consolidated with those of the savings association for purposes of reporting under Generally Accepted Accounting Principles (GAAP). Generally, these are entities in which a State savings association has a majority ownership interest.

Lower-tier entity includes any company in which a subsidiary has a direct or indirect ownership interest.

Ownership interest means any equity interest in a business organization, including stock, limited or general partnership interests, or shares in a limited liability company.

Subordinate organization means any corporation, partnership, business trust, association, joint venture, pool, syndicate, or other similar business organization in which a State savings association has a direct or indirect ownership interest, unless that ownership interest qualifies as a pass-through investment and is so designated by the investing State savings association.

Subsidiary means any subordinate organization directly or indirectly controlled by a State savings association.

§ 390.252 How must separate corporate identities be maintained?

(a) Each State savings association and subordinate organization thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(1) Their respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of their separate corporate procedures;

(3) Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise; and

(5) Unless the parent State savings association has guaranteed a loan to the subordinate organization, all bor-

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rowings by the subordinate organization indicate that the parent is not liable.

(b) The FDIC regulations that apply both to State savings associations and subordinate organizations shall not be construed as requiring a State savings association and its subordinate organizations to operate as a single entity.

§ 390.253 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?

When required by section 18(m) of the Federal Deposit Insurance Act, a State savings association (“you”) must file a notice (“Notice”) with the FDIC before establishing or acquiring a subsidiary or engaging in new activities in a subsidiary. The Notice must contain all of the information the required under 12 CFR 362.15. If the FDIC notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive the FDIC’s prior written approval before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

§ 390.254 How may a subsidiary of a State savings association issue securities?

(a) A subsidiary may issue, either directly or through a third party intermediary, any securities that its parent State savings association (“you”) may issue. The subsidiary must not state or imply that the securities it issues are covered by federal deposit insurance. A subsidiary may not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that you are insolvent or have been placed into receivership.

(b) You must file a notice with the FDIC in accordance with § 390.253 at least 30 days before your first issuance of any securities through an existing subsidiary or in conjunction with establishing or acquiring a new subsidiary. If the FDIC notifies you within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, you must receive the FDIC’s prior written approval before issuing securities through your subsidiary.

(c) For as long as any securities are outstanding, you must maintain all records generated through each securities issuance in the ordinary course of business, including a copy of any prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the FDIC. Such records must include, but are not limited to:

(1) The amount of your assets or liabilities (including any guarantees you make with respect to the securities issuance) that have been transferred or made available to the subsidiary; the percentage that such amount represents of the current book value of your assets on an unconsolidated basis; and the current book value of all such assets of the subsidiary;

(2) The terms of any guarantee(s) issued by you or any third party;

(3) A description of the securities the subsidiary issued;

(4) The net proceeds from the issuance of securities (or the pro rata portion of the net proceeds from securities issued through a jointly owned subsidiary); the gross proceeds of the securities issuance; and the market value of assets collateralizing the securities issuance (any assets of the subsidiary, including any guarantees of its securities issuance you have made);

(5) The interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(6) The minimum denomination of the subsidiary's securities; and

(7) Where the subsidiary marketed or intends to market the securities.

§ 390.255 How may a State savings association exercise its salvage power in connection with a service corporation or lower-tier entities?

(a) In accordance with this section, a State savings association ("you") may exercise your salvage power to make a contribution or a loan (including a guarantee of a loan made by any other person) to a lower-tier entity ("salvage investment") that exceeds the maximum amount otherwise permitted under law or regulation. You must notify the FDIC at least 30 days before making such a salvage investment. This notice must demonstrate that:

(1) The salvage investment protects your interest in the lower-tier entity;

(2) The salvage investment is consistent with safety and soundness; and

(3) You considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (a)(1) and (2) of this section.

(b) If the FDIC notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive the FDIC's prior written approval before making a salvage investment.

(c) If your lower-tier entity is a GAAP-consolidated subsidiary, your salvage investment under this section will be considered an investment in a subsidiary for purposes of subpart Z.

Subpart P—Lending and Investment

§ 390.260 General.

(a) *Authority and scope.* This subpart is being issued by the FDIC under its general rulemaking and supervisory authority under the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1811 *et seq.* Sections 390.264, 390.265, and 390.267 through 390.272 contain safety-and-soundness based lending and investment provisions applicable to State savings associations.

(b) *General lending standards.* Each State savings association is expected to conduct its lending and investment activities prudently. Each State savings association should use lending and investment standards that are consistent with safety and soundness, ensure adequate portfolio diversification and are appropriate for the size and condition of the institution, the nature and scope of its operations, and conditions in its lending market. Each State savings association should adequately monitor the condition of its portfolio and the adequacy of any collateral securing its loans.

§ 390.261 [Reserved]

§ 390.262 Definitions.

For purposes of this subpart:

Consumer loans include loans for personal, family, or household purposes