

§ 242.4

(3) *Goodwill*. Goodwill is excluded from a company's consolidated total assets and consolidated total financial assets.

(4) *Cash and cash equivalents*. (i) Cash is excluded from a company's consolidated total assets and consolidated total financial assets.

(ii) Cash equivalents are assets related to a financial activity.

(5) *Intangible assets*. Intangible assets are treated in the same manner as the transaction or asset that gives rise to the intangible asset.

§ 242.4 Significant nonbank financial companies and significant bank holding companies.

For purposes of Title I of the Dodd-Frank Act, the following definitions shall apply:

(a) *Significant nonbank financial company*. A "significant nonbank financial company" means—

(1) Any nonbank financial company supervised by the Board; and

(2) Any other nonbank financial company that had \$50 billion or more in total consolidated assets (as determined in accordance with applicable accounting standards) as of the end of its most recently completed fiscal year.

(b) *Significant bank holding company*. A "significant bank holding company" means any bank holding company or company that is, or is treated in the United States as, a bank holding company, that had \$50 billion or more in total consolidated assets as of the end of the most recently completed calendar year, as reported on either the Federal Reserve's FR Y-9C (Consolidated Financial Statement for Bank Holding Companies), or any successor form thereto, or the Federal Reserve's Form FR Y-7Q (Capital and Asset Report for Foreign Banking Organizations), or any successor form thereto.

APPENDIX A TO PART 242—FINANCIAL ACTIVITIES FOR PURPOSES OF TITLE I OF THE DODD-FRANK ACT

(a) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(b) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or

12 CFR Ch. II (1–1–16 Edition)

broker for purposes of the foregoing, in any state.

(c) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

(d) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(e) Underwriting, dealing in, or making a market in securities.

(f) Engaging in any activity that the Board has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, which include—

(1) *Extending credit and servicing loans*. Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others.

(2) *Activities related to extending credit*. Any activity usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit, including the following activities:

(i) *Real estate and personal property appraising*. Performing appraisals of real estate and tangible and intangible personal property, including securities.

(ii) *Arranging commercial real estate equity financing*. Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control, and risk of such a real estate project to one or more investors.

(iii) *Check-guaranty services*. Authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services, and purchasing from the merchant validly authorized checks that are subsequently dishonored.

(iv) *Collection agency services*. Collecting overdue accounts receivable, either retail or commercial.

(v) *Credit bureau services*. Maintaining information related to the credit history of consumers and providing the information to a credit grantor who is considering a borrower's application for credit or who has extended credit to the borrower.

(vi) *Asset management, servicing, and collection activities*. Engaging under contract with a third party in asset management, servicing, and collection¹ of assets of a type that

¹Asset management services include acting as agent in the liquidation or sale of loans and collateral for loans, including real estate and other assets acquired through foreclosure or in satisfaction of debts previously contracted.

an insured depository institution may originate and own.

(vii) *Acquiring debt in default.* Acquiring debt that is in default at the time of acquisition.

(viii) *Real estate settlement servicing.* Providing real estate settlement services.²

(3) *Leasing personal or real property.* Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if:

(i) The lease is on a nonoperating basis;³

(ii) The initial term of the lease is at least 90 days; and

(iii) In the case of leases involving real property:

(A) At the inception of the initial lease, the effect of the transaction will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease from rental payments, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial lease; and

(B) The estimated residual value of property for purposes of paragraph (f)(3)(iii)(A) of this section shall not exceed 25 percent of the acquisition cost of the property to the lessor.

(4) *Operating nonbank depository institutions.*

(i) *Industrial banking.* Owning, controlling, or operating an industrial bank, Morris Plan bank, or industrial loan company that is not a bank for purposes of the BHC Act.

(ii) *Operating savings associations.* Owning, controlling, or operating a savings association.

(5) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activi-

²For purposes of this section, real estate settlement services do not include providing title insurance as principal, agent, or broker.

³The requirement that the lease is on a nonoperating basis means that the company does not, directly or indirectly, engage in operating, servicing, maintaining, or repairing leased property during the lease term. For purposes of the leasing of automobiles, the requirement that the lease is on a nonoperating basis means that the company does not, directly or indirectly: (1) Provide servicing, repair, or maintenance of the leased vehicle during the lease term; (2) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (3) provide the loan of an automobile during servicing of the leased vehicle; (4) purchase insurance for the lessee; or (5) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

ties of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law that is not a bank for purposes of section 2(c) of the Bank Holding Company Act.

(6) *Financial and investment advisory activities.* Acting as investment or financial advisor to any person, including (without, in any way, limiting the foregoing):

(i) Serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(ii) Furnishing general economic information and advice, general economic statistical forecasting services, and industry studies;

(iii) Providing advice in connection with mergers, acquisitions, divestitures, investments, joint ventures, leveraged buyouts, recapitalizations, capital structurings, financing transactions and similar transactions, and conducting financial feasibility studies;⁴

(iv) Providing information, statistical forecasting, and advice with respect to any transaction in foreign exchange, swaps, and similar transactions, commodities, and any forward contract, option, future, option on a future, and similar instruments;

(v) Providing educational courses, and instructional materials to consumers on individual financial management matters; and

(vi) Providing tax-planning and tax-preparation services to any person.

(7) *Agency transactional services for customer investments.*

(i) *Securities brokerage.* Providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), whether alone or in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services).

(ii) *Riskless principal transactions.* Buying and selling in the secondary market all types of securities on the order of customers as a "riskless principal" to the extent of engaging in a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer.

(iii) *Private placement services.* Acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 (1933 Act) and the rules of the Securities and Exchange Commission.

⁴Feasibility studies do not include assisting management with the planning or marketing for a given project or providing general operational or management advice.

(iv) *Futures commission merchant.* Acting as a futures commission merchant for unaffiliated persons in the execution, clearance, or execution and clearance of any futures contract and option on a futures contract.

(v) *Other transactional services.* Providing to customers as agent transactional services with respect to swaps and similar transactions, any transaction described in paragraph (f)(8) of this appendix, any transaction that is permissible for a state member bank, and any other transaction involving a forward contract, option, futures, option on a futures or similar contract (whether traded on an exchange or not) relating to a commodity that is traded on an exchange.

(8) *Investment transactions as principal.*

(i) *Underwriting and dealing in government obligations and money market instruments.* Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including banker's acceptances and certificates of deposit.

(ii) *Investing and trading activities.* Engaging as principal in:

(A) Foreign exchange;

(B) Forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset (including gold, silver, platinum, palladium, copper, or any other metal), nonfinancial asset, or group of assets, other than a bank-ineligible security,⁵ if—

(1) A state member bank is authorized to invest in the asset underlying the contract;

(2) The contract requires cash settlement;

(3) The contract allows for assignment, termination, or offset prior to delivery or expiration, and the company—

(i) Makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract; or

(ii) Receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset; or

(4) The contract does not allow for assignment, termination, or offset prior to delivery or expiration and is based on an asset for which futures contracts or options on futures contracts have been approved for trading on a U.S. contract market by the Commodity Futures Trading Commission, and the company—

(i) Makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract; or

⁵ A bank-ineligible security is any security that a state member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

(ii) Receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset.

(C) Forward contracts, options,⁶ futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on an index of a rate, a price, or the value of any financial asset, nonfinancial asset, or group of assets, if the contract requires cash settlement.

(iii) *Buying and selling bullion, and related activities.* Buying, selling and storing bars, rounds, bullion, and coins of gold, silver, platinum, palladium, copper, and any other metal for the company's own account and the account of others, and providing incidental services such as arranging for storage, safe custody, assaying, and shipment.

(9) *Management consulting and counseling activities.*

(i) *Management consulting.* (A) Providing management consulting advice:⁷

(1) On any matter to unaffiliated depository institutions, including commercial banks, savings and loan associations, savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, industrial loan companies, trust companies, and branches or agencies of foreign banks;

(2) On any financial, economic, accounting, or audit matter to any other company.

(B) Revenues derived from, or assets related to, a company's management consulting activities under this subparagraph will not be considered to be financial if the company:

(1) Owns or controls, directly or indirectly, more than 5 percent of the voting securities of the client institution; or

⁶This reference does not include acting as a dealer in options based on indices of bank-ineligible securities when the options are traded on securities exchanges. These options are securities for purposes of the federal securities laws and bank-ineligible securities for purposes of section 20 of the Glass-Steagall Act, 12 U.S.C. 337. Similarly, this reference does not include acting as a dealer in any other instrument that is a bank-ineligible security for purposes of section 20. Bank holding companies that deal in these instruments must do so in accordance with the Board's orders on dealing in bank-ineligible securities.

⁷In performing this activity, companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.131).

(2) Allows a management official, as defined in 12 CFR 212.2(h), of the company or any of its affiliates to serve as a management official of the client institution, except where such interlocking relationship is permitted pursuant to an exemption permitted by the Board.

(C) Up to 30 percent of a nonbank company's assets or revenues related to management consulting services provided to customers not described in paragraph (f)(9)(i)(A)(1) or regarding matters not described in paragraph (f)(9)(i)(A)(2) of this appendix will be included in the company's financial assets or revenues.

(ii) *Employee benefits consulting services.* Providing consulting services to employee benefit, compensation and insurance plans, including designing plans, assisting in the implementation of plans, providing administrative services to plans, and developing employee communication programs for plans.

(iii) *Career counseling services.* Providing career counseling services to:

(A) A financial organization⁸ and individuals currently employed by, or recently displaced from, a financial organization;

(B) Individuals who are seeking employment at a financial organization; and

(C) Individuals who are currently employed in or who seek positions in the finance, accounting, and audit departments of any company.

(10) *Support services.*

(i) *Courier services.* Providing courier services for:

(A) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(B) Audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.⁹

(ii) *Printing and selling MICR-encoded items.* Printing and selling checks and related documents, including corporate image checks, cash tickets, voucher checks, deposit slips, savings withdrawal packages, and other forms that require Magnetic Ink Character Recognition (MICR) encoding.

(11) *Insurance agency and underwriting.*

⁸Financial organization refers to insured depository institution holding companies and their subsidiaries, other than non-banking affiliates of diversified savings and loan holding companies that engage in activities not permissible under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(c)(8)).

⁹See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for company entry into the activity.

(i) *Credit insurance.* Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is:

(A) Directly related to an extension of credit by the company or any of its subsidiaries; and

(B) Limited to ensuring the repayment of the outstanding balance due on the extension of credit¹⁰ in the event of the death, disability, or involuntary unemployment of the debtor.

(ii) *Finance company subsidiary.* Acting as agent or broker for insurance directly related to an extension of credit by a finance company¹¹ that is a subsidiary of a company, if:

(A) The insurance is limited to ensuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(B) The extension of credit is not more than \$10,000, or \$25,000 if it is to finance the purchase of a residential manufactured home¹² and the credit is secured by the home; and

(C) The applicant commits to notify borrowers in writing that:

(1) They are not required to purchase such insurance from the applicant;

(2) Such insurance does not insure any interest of the borrower in the collateral; and

(3) The applicant will accept more comprehensive property insurance in place of such single-interest insurance.

(iii) *Insurance in small towns.* Engaging in any insurance agency activity in a place where the company or a subsidiary has a lending office and that:

(A) Has a population not exceeding 5,000 (as shown in the preceding decennial census); or

(B) Has inadequate insurance agency facilities, as determined by the Board, after notice and opportunity for hearing.

¹⁰Extension of credit includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full-payout leases that meet the requirements of paragraph (f)(3) of this appendix.

¹¹Finance company includes all non-deposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual states as finance companies and that engage in a significant degree of consumer lending.

¹²These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(iv) *Insurance-agency activities conducted on May 1, 1982.* Engaging in any specific insurance-agency activity¹³ if the company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.¹⁴ Revenues derived from, or assets related to, a company's specific insurance agency activity under this clause will be considered financial only if the company:

(A) Engages in such specific insurance agency activity only at locations:

(1) In the state in which the company has its principal place of business (as defined in 12 U.S.C. 1842(d));

(2) In any state or states immediately adjacent to such state; and

(3) In any state in which the specific insurance-agency activity was conducted (or was approved to be conducted) by such company or subsidiary thereof or by any other subsidiary of such company on May 1, 1982; and

(B) Provides other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982, by the company or subsidiary.

(v) *Supervision of retail insurance agents.* Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell:

(A) Fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the company or its subsidiaries; and

(B) Group insurance that protects the employees of the company or its subsidiaries.

(vi) *Small companies.* Engaging in any insurance-agency activity if the company has total consolidated assets of \$50 million or less. Revenues derived from, or assets related to, a company's insurance-agency activities under this paragraph will be considered financial only if the company does not engage

in the sale of life insurance or annuities except as provided in paragraphs (f)(11) (i) and (iii) of this appendix, and does not continue to engage in insurance-agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the company and its subsidiaries exceed \$50 million.

(vii) *Insurance-agency activities conducted before 1971.* Engaging in any insurance-agency activity performed at any location in the United States directly or indirectly by a company that was engaged in insurance-agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

(12) *Community development activities.*

(i) *Financing and investment activities.* Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(ii) *Advisory activities.* Providing advisory and related services for programs designed primarily to promote community welfare.

(13) *Money orders, savings bonds, and traveler's checks.* The issuance and sale at retail of money orders and similar consumer-type payment instruments; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

(14) *Data processing.*

(i) Providing data processing, data storage and data transmission services, facilities (including data processing, data storage and data transmission hardware, software, documentation, or operating personnel), databases, advice, and access to such services, facilities, or data-bases by any technological means, if the data to be processed, stored or furnished are financial, banking or economic.

(ii) Up to 30 percent of a nonbank company's assets or revenues related to providing general purpose hardware in connection with providing data processing products or services described in paragraph (f)(14)(i) of this appendix will be included in the company's financial assets or revenues.

(15) *Administrative services.* Providing administrative and other services to mutual funds.

(16) *Securities exchange.* Owning shares of a securities exchange.

(17) *Certification authority.* Acting as a certification authority for digital signatures and authenticating the identity of persons conducting financial and nonfinancial transactions.

(18) *Employment histories.* Providing employment histories to third parties for use in making credit decisions and to depository institutions and their affiliates for use in the ordinary course of business.

¹³Nothing contained in this provision precludes a subsidiary that is authorized to engage in a specific insurance-agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes.

¹⁴For the purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

Federal Reserve System

§ 243.1

(19) *Check cashing and wire transmission.* Check cashing and wire transmission services.

(20) *Services offered in connection with banking services.* In connection with offering banking services, providing notary public services, selling postage stamps and postage-paid envelopes, providing vehicle registration services, and selling public transportation tickets and tokens.

(21) *Real estate title abstracting.*

(g) Engaging, in the United States, in any activity that a bank holding company may engage in outside of the United States; and the Board has determined, under regulations prescribed or interpretations issued pursuant to section 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(13)) to be usual in connection with the transaction of banking or other financial operations abroad. Those activities include—

(1) Providing management consulting services, including to any person with respect to nonfinancial matters, so long as the management consulting services are advisory and do not allow the company to control the person to which the services are provided.

(2) Operating a travel agency in connection with financial services.

(3) Organizing, sponsoring, and managing a mutual fund.

(4) Commercial banking and other banking activities.

(h) Directly, or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities, or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not financial in nature as defined in this appendix if:

(1) Such shares, assets, or ownership interests are acquired and held as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(2) Such shares, assets, or ownership interests are held for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the activities described in paragraph (h)(1) of this appendix; and

(3) During the period such shares, assets, or ownership interests are held, the company does not routinely manage or operate such company or entity except as may be necessary or required to obtain a reasonable return on investment upon resale or disposition.

(i) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities, or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not financial in nature as defined in this appendix if—

(1) Such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

(2) Such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant state law governing such investments; and

(3) During the period such shares, assets, or ownership interests are held, the company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.

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

(k) Providing any device or other instrumentality for transferring money or other financial assets.

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

PART 243—RESOLUTION PLANS

Sec.

243.1 Authority and scope.

243.2 Definitions.

243.3 Resolution plan required.

243.4 Informational content of a resolution plan.

243.5 Review of resolution plans; resubmission of deficient resolution plans.

243.6 Failure to cure deficiencies on resubmission of a resolution plan.

243.7 Consultation.

243.8 No limiting effect or private right of action; confidentiality of resolution plans.

243.9 Enforcement.

AUTHORITY: 12 U.S.C. 5365.

SOURCE: 76 FR 67340, Nov. 1, 2011, unless otherwise noted.

§ 243.1 Authority and scope.

(a) *Authority.* This part is issued pursuant to section 165(d)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the *Dodd-Frank Act*) (Pub. L. 111–203, 124 Stat. 1376, 1426–1427), 12 U.S.C. 5365(d)(8), which requires the Board of Governors of the