

§ 93.500 Definitions.

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APHIS-defined EU CSF region. The European Union Member States of Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

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PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

3. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

4. In § 94.0, the definition of *APHIS-defined EU CSF region* is revised to read as follows:

§ 94.0 Definitions.

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APHIS-defined EU CSF region. The European Union Member States of Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

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§ 94.1 [Amended]

5. In § 94.1, paragraph (a)(2) is amended by adding the words “Slovakia, Slovenia,” immediately after the word “Portugal.”

§ 94.11 [Amended]

6. In § 94.11, paragraph (a) is amended by adding the words “Slovakia, Slovenia,” immediately after the word “Portugal.”

7. In § 94.12, paragraph (a) is revised to read as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

(a) Swine vesicular disease is considered to exist in all regions of the world except Australia, Austria, the

Bahamas, Belgium, Bulgaria, Canada, Central American countries, Chile, the Czech Republic, Denmark, Dominican Republic, Estonia, Fiji, Finland, France, Germany, Greece, Greenland, Haiti, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Trust Territories of the Pacific, the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland), Yugoslavia, and the Regions in Italy of Friuli, Liguria, Marche, and Valle d’Aosta.

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8. In § 94.13 introductory text, the first sentence is revised to read as follows:

§ 94.13 Restrictions on importation of pork or pork products from specified regions.

Austria, the Bahamas, Belgium, Bulgaria, Chile, the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Switzerland, the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland), Yugoslavia, and the Regions in Italy of Friuli, Liguria, Marche, and Valle d’Aosta are declared free of swine vesicular disease in § 94.12(a).

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PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

9. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

10. In § 98.30, the definition of *APHIS-defined EU CSF region* is revised to read as follows:

§ 98.30 Definitions.

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APHIS-defined EU CSF region. The European Union Member States of Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Republic of Ireland, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

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§ 98.38 [Amended]

11. Section 98.38 is amended as follows:

a. In the introductory text, by removing the words “, except as noted in paragraph (h) of this section with regard to swine semen imported from Denmark, Finland, the Republic of Ireland, Sweden, or the United Kingdom”.

b. By removing paragraph (h).

c. By redesignating paragraph (i) as paragraph (h).

d. In newly redesignated paragraph (h), by removing the words “through (h)” and adding the words “through (g)” in their place.

Done in Washington, DC, this 7th day of February 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–3112 Filed 2–10–11; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1405]

RIN 7100–AD64

Definitions of “Predominantly Engaged in Financial Activities” and “Significant” Nonbank Financial Company and Bank Holding Company

AGENCY: Board of Governors of the Federal Reserve System (“Board”).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation Y that establish the criteria for determining whether a company is “predominantly engaged in financial activities” and define the terms “significant nonbank financial company” and “significant bank holding company” for purposes of Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act” or “Act”). These terms are relevant to various provisions of Title I of the Dodd-Frank Act, including section 113, which authorizes the Financial Stability Oversight Council (“Council”) to designate a nonbank financial company for supervision by the Board if the Council determines that the company could pose a threat to the financial stability of the United States. The Council recently requested comment on a proposed rule to implement section 113 of the Dodd-Frank Act.

DATES: *Comments:* Comments should be received on or before March 30, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1405 and

RIN No. 7100-AD64, by any of the following methods:

Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

Facsimile: (202) 452-3819 or (202) 452-3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Paige E. Pidano, Senior Attorney, (202) 452-2803 or Kieran J. Fallon, Associate General Counsel, (202) 452-5270, Legal Division; Margaret Donovan, Supervisory Financial Analyst, (202) 872-7542, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act, enacted on July 21, 2010, establishes the Council, which is composed of ten voting members and five non-voting members.¹ Among other

¹ See 12 U.S.C. 5321. The ten voting members of the Council are: The Secretary of the Treasury (who is also Chairperson of the Council); the Chairman of the Board; the heads of the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency ("OCC"), the Securities and Exchange Commission ("SEC"), the Federal Deposit Insurance Corporation ("FDIC"), the Commodity Futures Trading Commission ("CFTC"), the Federal Housing Finance Agency ("FHFA"), and the National Credit Union Administration ("NCUA"); and an independent member with insurance expertise appointed by the President and confirmed by the Senate. The five non-voting members of the Council are: The heads of the newly established Office of Financial Research and the Federal Insurance

authorities and duties, the Council may require that a "nonbank financial company" become subject to consolidated, prudential supervision by the Board if the Council determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could pose a threat to the financial stability of the United States.² Section 113 of the Dodd-Frank Act specifies a number of criteria that the Council must consider in determining whether to designate a nonbank financial company for supervision by the Board. These factors include the size and leverage of the company, as well as the extent and nature of the company's transactions and relationships with other "significant nonbank financial companies" and "significant bank holding companies."³ Nonbank financial companies that are designated by the Council under section 113 of the Dodd-Frank Act are referred to as "nonbank financial companies supervised by the Board."⁴

The authority of the Council to require that a nonbank financial company become subject to consolidated prudential supervision by the Board is an important component of the legislative and regulatory changes designed to address gaps and weaknesses in the financial regulatory system that became evident during the financial crisis. These gaps allowed certain large, interconnected financial firms whose failure could pose substantial risks to the financial stability of the United States to avoid the type of prudential, consolidated supervision applicable to bank holding companies.

Besides being used in section 113 of the Dodd-Frank Act, the terms "nonbank financial company" and "significant" nonbank financial company and bank holding company also are used in several other provisions of Title I of the Act. For example, under section 112(d)(3) of the Dodd-Frank Act (12 U.S.C 5322(d)(3)), the Council, acting through the Office of Financial Research ("OFR"), may require a nonbank financial company to submit reports to the OFR and the Council to assist the Council in assessing the extent to which a financial activity or financial market in which the nonbank financial

Office, and a State insurance commissioner, banking supervisor, and securities commissioner.

² See 12 U.S.C. 5323. The Council's decision requires the vote of at least two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council (the Secretary of the Treasury).

³ See 12 U.S.C. 5323(a)(2)(C) and (b)(2)(C).

⁴ See 12 U.S.C. 5323 *et seq.*

company participates, or the nonbank financial company itself, poses a threat to the financial stability of the United States. In addition, the Dodd-Frank Act requires nonbank financial companies supervised by the Board and bank holding companies with total consolidated assets of \$50 billion or more to submit reports to the Board, the Council, and the FDIC on the nature and extent of (i) the company's credit exposure to other significant nonbank financial companies and significant bank holding companies; and (ii) the credit exposure of such significant entities to the company.⁵

Title I of the Dodd-Frank Act defines a "nonbank financial company" to include both a U.S. nonbank financial company and a foreign nonbank financial company. The statute, in turn, defines a U.S. nonbank financial company as a company (other than a bank holding company and certain other specified types of entities)⁶ that is (i) incorporated or organized under the laws of the United States or any State; and (ii) predominantly engaged in financial activities. A foreign nonbank financial company is defined as a company (other than a bank holding company or foreign bank or company that is, or is treated as, a bank holding company) that is (i) incorporated or organized outside the United States; and (ii) predominantly engaged in financial activities.⁷ The proposed rule incorporates these definitions.⁸ Thus, the term "nonbank financial company"

⁵ See 12 U.S.C. 5365(d)(2).

⁶ See 12 U.S.C. 5311(a)(4)(B). Besides bank holding companies, the statute specifically provides that the term "U.S. nonbank financial company" does not include (i) a Farm Credit System institution chartered and subject to the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*), (ii) a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository that in each case is registered with the SEC, or (iii) a board of trade designated as a contract market (or parent thereof), or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility or a swap data repository that in each case is registered with the CFTC. See 12 U.S.C. 5311(a)(4)(B). Consistent with the definition of a bank holding company in section 102(a)(1) of the Dodd-Frank Act (12 U.S.C. 5311(a)(1)), a U.S. subsidiary or office of a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 ("BHC Act") by reason of section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) ("IBA") also is not considered a U.S. nonbank financial company.

⁷ See *id.* at § 5311(a)(4)(A). A foreign bank, or foreign company controlling a foreign bank, is treated as a bank holding company for purposes of the BHC Act if the foreign bank has a branch, agency, or commercial lending company subsidiary in the United States and does not control a U.S. bank.

⁸ See § 225.300 of the Proposed Rule.

applies to financial firms that are not already supervised and regulated by the Federal Reserve System as bank holding companies.

The Act defines financial activities by reference to those activities that have been determined—by statute, regulation, or order—to be financial in nature under section 4(k) of the BHC Act (as amended by the Gramm-Leach-Bliley Act)⁹ and, thus, are permissible for a financial holding company to conduct.¹⁰ For purposes of Title I of the Dodd-Frank Act, a company is considered to be “predominantly engaged” in financial activities if *either* (i) the annual gross revenues derived by the company and all of its subsidiaries from financial activities, as well as from the ownership or control of an insured depository institution, represent 85 percent or more of the consolidated annual gross revenues of the company; *or* (ii) the consolidated assets of the company and all of its subsidiaries related to financial activities, as well as related to the ownership or control of an insured depository institution, represent 85 percent or more of the consolidated assets of the company.

II. Overview of the Proposed Rule

The Dodd-Frank Act requires the Board to issue regulations that establish the requirements for determining if a company is “predominantly engaged in financial activities” for purposes of Title I of the Act and that define the terms “significant nonbank financial company” and “significant bank holding company.”¹¹ Accordingly, the Board is requesting comment on a proposed rule that would establish these criteria and define these terms.¹² The Board is requesting comment on the proposed rule at this time because the proposals are relevant to the authority of the Council to designate nonbank financial

companies for supervision by the Board under section 113 of the Dodd-Frank Act. As noted previously, the Council recently requested comment on a proposed rule to implement the designation standards and process for nonbank financial companies under section 113.¹³ The Board believes soliciting comment on the proposed rule at this time should facilitate public understanding of, and comment on, the Council’s proposal, and allow the Council to consider potential designations of nonbank financial companies under section 113 promptly after the Council’s rule is finalized.

In developing the proposed rule, the Board considered the language and purposes of the relevant statutory provisions. In addition, the Board consulted with the other voting member agencies of the Council in developing this proposed rule.

A. Predominantly Engaged in Financial Activities

1. Two-Year Test Based on Consolidated Financial Statements

The proposed rule provides that a company is predominantly engaged in financial activities if:

- The consolidated annual gross financial revenues of the company in either of its two most recently completed fiscal years represent 85 percent or more of the company’s consolidated annual gross revenues (as determined in accordance with applicable accounting standards) in that fiscal year; *or*
- The consolidated total financial assets of the company as of the end of either of its two most recently completed fiscal years represent 85 percent or more of the company’s consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of that fiscal year.¹⁴

The proposed test is based on the relevant company’s annual financial revenue in, or financial assets at the end of, *either* of its two most recent fiscal years. This methodology is designed to allow the Council to effectively fulfill its important responsibilities of designating (and reviewing existing designations of) those nonbank financial companies whose failure could pose a threat to the financial stability of the United States, and to allow the Board to effectively fulfill its responsibilities for supervising such firms. While the Act provides that a company’s consolidated annual gross revenues and consolidated assets are to be used in determining whether the company is predominantly engaged in

financial activities, the Act does not specify over what time period (*e.g.*, one year, two years, *etc.*) the annual gross revenues or consolidated assets of a company should be considered in making this determination.

The two-year test would, for example, allow the Council to designate a systemically important firm whose financial assets and revenues traditionally have met or exceeded the required 85 percent threshold, but that experienced a temporary decline in financial revenues or assets (such as, for example, due to declining financial asset prices caused by distress in the financial markets) during its last fiscal year. Similarly, the two-year test would provide the Council a period of time to reevaluate—as contemplated by the Dodd-Frank Act¹⁵—an existing designation with respect to a systemically important nonbank financial company should the company’s level of financial revenues or assets fall below the 85 percent threshold at the end of a single year.

At the same time, however, a company would not be considered to be predominantly engaged in financial activities under the two-year test set forth in § 225.301(a)(1) or (2) of the proposed rule, and would not qualify as a nonbank financial company under this test, if the company’s level of financial revenues or assets were below the 85 percent threshold in both of its two most recent fiscal years. Thus, companies that are and remain substantially engaged in *nonfinancial* activities would not be subject to potential designation by the Council under section 113 of the Dodd-Frank Act or to consolidated supervision by the Board as a result of such a designation.

The proposed rule defines the “consolidated annual gross financial revenues” of a company as that portion of the company’s consolidated annual gross revenues, as determined in accordance with applicable accounting standards, that were derived, directly or indirectly, by the company or any of its subsidiaries from (i) activities that are financial in nature under section 4(k) of the BHC Act; or (ii) the ownership, control, or activities of an insured depository institution.¹⁶ Similarly, the “consolidated total financial assets” of a company is defined as that portion of the company’s consolidated total assets, as determined in accordance with applicable accounting standards, that are related to (i) activities that are financial in nature under section 4(k) of

⁹ 12 U.S.C. 1843(k).

¹⁰ See 12 U.S.C. 5311(a)(6). A financial holding company is a bank holding company that meets certain capital, managerial and Community Reinvestment Act standards and that has made an effective election to become a financial holding company. See 12 CFR 225.81 and 225.82. Financial holding companies are permitted to engage in a wider array of financial activities—including full-scope securities underwriting and dealing, insurance underwriting and agency activities, and merchant banking activities—than other bank holding companies.

¹¹ See 12 U.S.C. 5311(a)(7) and (b).

¹² The Board notes that Title II of the Dodd-Frank Act includes a separate definition of a “financial company” that is used for purposes of that Title’s provisions related to the new orderly liquidation authority. See 12 U.S.C. 5381(a)(11) and (b) (as added by section 201 of the Dodd-Frank Act). The FDIC has responsibility for issuing regulations, in consultation with the Secretary of the Treasury, that define the term “financial company” for purposes of Title II of the Act. See *id.* at § 5381(b).

¹³ See 76 FR 4555 (2011).

¹⁴ See § 225.301(a)(1) and (2) of the Proposed Rule.

¹⁵ See 12 U.S.C. 5223(d).

¹⁶ See § 225.301(b) of the Proposed Rule.

the BHC Act, or (ii) the ownership, control, or activities of an insured depository institution.¹⁷ The Dodd-Frank Act specifically provides that revenues or assets attributable to an insured depository institution are to be considered as “financial” revenues or assets for purposes of determining whether a company is predominantly financial.¹⁸ The proposed rule clarifies that revenues and assets attributable to a subsidiary of an insured depository institution also are considered to be financial in nature. This ensures that such revenues and assets are consistently treated as financial regardless of whether a company holds an interest in such a subsidiary directly or indirectly through an insured depository institution. Moreover, under the Federal banking laws, a subsidiary of an insured depository institution generally may engage only in the types of banking activities permissible for its parent insured depository institution and other financial activities as expressly authorized by Federal law.

Under the proposed two-year test, the amount of a company’s financial revenues and financial assets would be determined as a percentage of the company’s consolidated annual gross revenues and consolidated total assets, respectively, as determined under and in accordance with U.S. generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS).¹⁹ To reduce the potential for companies to arbitrage the 85 percent financial test by changing the accounting standards used for these purposes, the rule specifically provides that the accounting standards used for the predominantly financial test must be the same standards that the company uses in the ordinary course of its business in preparing its consolidated financial statements.

The Board proposes to allow companies to use their consolidated, year-end financial statements prepared in accordance with GAAP or IFRS as the basis for determining their annual gross revenue and consolidated assets for purposes of the two-year test because

this methodology is likely to provide a transparent, accurate, and comparable basis for determining such amounts across companies and, thus, should facilitate the ability of companies and, if necessary, the Board or the Council to determine whether they are a nonbank financial company for purposes of Title I of the Dodd-Frank Act. Moreover, allowing companies to use the year-end consolidated financial statements that they already prepare for financial reporting or other purposes should help reduce potential regulatory burden.

To further help facilitate compliance with the proposed rule and reduce burden, the proposed rule includes two rules of construction governing the application of the two-year test to revenues and assets attributable to a company’s minority, less-than-controlling equity investments in *unconsolidated* entities. Under the first rule of construction, the revenues derived from, and assets related to, a company’s equity investment in another company (the “investee company”) the financial statements of which are *not* consolidated with those of the company under applicable accounting standards would be considered as financial revenues or assets if the investee company itself is predominantly engaged in financial activities under the 85-percent, two-year test set forth in § 225.301(a)(1) or (2) of the proposed rule.²⁰ Treating the revenues and assets attributable to such an investment as financial based on the aggregate mix of the investee company’s revenues and assets is consistent with the statutory definition of a nonbank financial company generally, which treats an entire nonbank company as financial if 85 percent or more of the company’s revenues or assets are attributable to financial activities.²¹ This approach also avoids requiring a company to determine the precise percentage of an investee company’s activities that is financial in order to determine the portion of the company’s revenues or assets related to the investment that should be treated as financial. Companies tend to have less access to detailed business information from other companies in which they have a non-controlling, minority investment than companies that are consolidated in the company’s financial statements.

The second rule of construction would permit (but not require) a company to treat as nonfinancial the revenues and assets attributable to a limited amount of *de minimis* equity investments in investee companies

without having to separately determine whether the investee company is itself predominantly engaged in financial activities.²² This rule of construction is subject to several conditions designed to limit the potential for these *de minimis* investments to substantially alter the character of the activities of a company.

Specifically, this rule of construction provides that a company may treat revenues derived from, or assets related to, an equity investment by the company in an investee company as revenues or assets *not* derived from, or related to, activities that are financial in nature (regardless of the type of activities conducted by the other company), if (i) the company owns less than five percent of any class of outstanding voting shares, and less than 25 percent of the total equity, of the investee company; (ii) the financial statements of the investee company are not consolidated with those of the company under applicable accounting standards; (iii) the company’s investment in the investee company is *not* held in connection with the conduct of any financial activity (such as, for example, investment advisory activities or merchant banking investment activities) by the company or any of its subsidiaries; (iv) the investee company is not a bank, bank holding company, broker-dealer, insurance company, or other regulated financial institution; and (v) the aggregate amount of revenues or assets treated as nonfinancial under the rule of construction in any year does not exceed five percent of the company’s annual gross financial revenues or consolidated total financial assets of the company.²³

2. Case-By-Case Determination by the Board

The proposed rule also allows the Board, on a case-by-case basis and based on all the facts and circumstances, to determine that a company is predominantly engaged in financial activities because either (i) 85 percent or more of the consolidated annual gross revenues of the company are derived from activities that are financial in nature under section 4(k) of the BHC Act or from the ownership, control, or activities of an insured depository institution or a subsidiary of such an institution; or (ii) 85 percent or more of the consolidated assets of the company are related to activities that are financial in nature under section 4(k) of the BHC Act or to the ownership, control, or activities of an insured depository

¹⁷ See § 225.301(c) of the Proposed Rule.

¹⁸ See 12 U.S.C. 5311(a)(6).

¹⁹ See § 225.300(a) of the Proposed Rule. To account for the possibility that a foreign company may not use either GAAP or IFRS in preparing its consolidated annual financial statements, the proposed rule would allow a company, with the Board’s approval, to use another set of accounting standards for purposes of determining whether the company is predominantly engaged in financial activities. In reviewing any request to use alternative accounting standards, the Board would carefully review whether the proposed alternative accounting standards are likely to ensure a fair and accurate presentation of the company’s revenues and assets in a manner similar to GAAP or IFRS.

²⁰ See § 225.301(e)(1) of the Proposed Rule.

²¹ See 12 U.S.C. 5311(a)(4) and (a)(6).

²² See § 225.301(e)(2) of the Proposed Rule.

²³ See *id.*

institution or a subsidiary of such an institution.²⁴

This provision of the proposed rule is designed to provide the Board the flexibility, in appropriate circumstances, to consider whether a company meets the statute's 85 percent financial revenue or asset test based on the full range of information that may be available concerning the company's activities and assets (including information obtained from other Federal or State financial supervisors or agencies) at any time. For example, the Board notes that the mix of a company's revenues or assets, as well as the risks the company may pose to the U.S. financial system, may change significantly and quickly as a result of various types of transactions or actions, such as a merger, consolidation, acquisition, establishment of a new business line, or the initiation of a new activity. Moreover, these transactions and actions may occur at any time during a company's fiscal year and, accordingly, the effects of the transactions or actions may not be reflected in the year-end consolidated financial statements of the company for several months. Section 225.301(a)(3) of the proposed rule would allow the Board to promptly consider the effect of changes in the nature or mix of a company's activities as a result of such a transaction or action where such changes may affect the judgment of the Council as to whether the company should be designated and subject to consolidated supervision by the Board under section 113 of the Dodd-Frank Act to help protect the financial stability of the United States. The Board would expect to conduct such a case-by-case review of whether a company is predominantly financial only when justified by the circumstances.

3. Activities That Are Financial in Nature

As noted above, the Dodd-Frank Act defines financial activities by reference to those activities that have been determined to be financial in nature under section 4(k) of the BHC Act (as amended by the Gramm-Leach-Bliley Act). Existing § 225.86 of the Board's Regulation Y (12 CFR 225.86) references all of the activities that already have been determined—by statute, regulation or order—to be financial in nature under section 4(k) of the BHC Act. In order to assist nonbank companies in determining whether they are predominantly engaged in financial activities, the proposed rule specifies that these activities are “financial in

nature” for purposes of the proposed rule and provides cross-references to the individual parts of § 225.86 of the Board's Regulation Y that identify these activities. These activities also are summarized below.²⁵

Section 4(k) of the BHC Act also authorizes the Board, in consultation with the Secretary of the Treasury, to determine in the future that additional activities are “financial in nature.”²⁶ The proposed rule expressly recognizes that additional activities, beyond those already determined to be financial in nature and identified in § 225.86(a), (b), or (c) of the Board's Regulation Y, may be determined to be financial in nature under section 4(k).²⁷ Upon such a determination with respect to an activity, nonbank companies must include any revenues or assets attributable to the activity as financial revenues and assets for purposes of determining whether they are predominantly engaged in financial activities and, thus, a “nonbank financial company” for purposes of Title I of the Dodd-Frank Act.

a. *Closely Related to Banking Activities.* Among the activities that section 4(k) of the BHC Act defines as being “financial in nature” are all of the

²⁵ Only summary descriptions of the activities that have been determined to be financial in nature are provided in this Supplementary Information. For complete information on the scope of these activities please refer to the sections of the Board's Regulation Y referenced. Besides authorizing financial holding companies to engage in activities that have been determined to be “financial in nature,” section 4(k)(1) of the BHC Act also permits a financial holding company to engage in activities that (i) the Board, in consultation with the Secretary of the Treasury, has determined to be “incidental” to a financial activity; or (ii) the Board has determined to be “complementary to financial activities and do not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally.” See 12 U.S.C. 1843(k)(1)(A) and (B). Because section 102(a)(6) of the Dodd-Frank Act refers only to activities that have been determined to be financial in nature under section 4(k), activities that have been (or are) determined to be “incidental” to financial activities (such as “finder” activities listed in § 225.86(d) of Regulation Y) or to be “complementary” to financial activities under section 4(k) are *not* considered financial activities for purposes of determining whether a company is predominantly engaged in financial activities under section 102(a)(6) of the Dodd-Frank Act.

²⁶ See 12 U.S.C. 1843(k)(1) and (2).

²⁷ See 225.301(d)(1)(ii) and (iii) of the Proposed Rule. These activities include those activities that the Board, in consultation with the Secretary of the Treasury, may determine in a specific instance are financial in nature under section 4(k)(5) of the BHC Act and § 225.86(e) of Regulation Y (12 U.S.C. 1843(k)(5) and 12 CFR 225.86(e)) because the activities involve lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities; providing any device or other instrumentality for transferring money or other financial assets; and arranging, effecting, or facilitating financial transactions for the account of third parties.

activities that the Board had determined, by regulation or order, prior to November 12, 1999, to be “so closely related to banking as to be a proper incident thereto” under section 4(c)(8) of the BHC Act.²⁸ These activities are listed in § 225.28(b) and § 225.86(a)(2) of the Board's Regulation Y (12 CFR 225.28(b) and 225.86(a)(2)) and include, among other activities—

- Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts);
- Leasing personal or real property or acting as agent, broker, or adviser in leasing such property;
- Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by Federal or State law;
- Acting as investment or financial advisor to any person, including serving as investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), and sponsoring, organizing, and managing a closed-end investment company;
- Acting as a futures commission merchant for the execution, clearance, or execution and clearance of any futures contract and option on a futures contract traded on an exchange in the United States or abroad;
- Engaging as principal in foreign exchange as well as a broad range of forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not;
- Issuing and selling at retail money orders and similar consumer-type payment instruments;
- Providing data processing, data storage and data transmission services, facilities, databases, advice, and access to such services, facilities, or databases by any technological means, with respect to financial data and, to a limited extent, nonfinancial data;
- Providing administrative and other services to mutual funds;
- Check cashing and wire transmission services; and
- Real estate title abstracting.

b. *Activities determined to be usual in connection with the transaction of banking abroad.* Section 4(k) also provides that “financial in nature” activities include those activities that the Board had determined by regulation in effect on November 11, 1999, to be usual in connection with the transaction of banking or other financial operations abroad. These activities are listed in § 225.86(b) of the Board's Regulation Y (12 CFR 225.86(b)) and include, among other activities:

- Management consulting services;
- Operating a travel agency in connection with the offering of financial services; and

²⁸ See 12 U.S.C. 1843(k)(4)(F).

²⁴ See § 225.301(a)(3) of the Proposed Rule.

- Organizing, sponsoring, and managing a mutual fund.

c. *Activities defined as financial in nature by the GLB Act.* The GLB Act itself also defined a number of important activities as being financial in nature. These activities, which are referenced in § 225.86(c) of the Board's Regulation Y (12 CFR 225.86(c)), include, among other activities:

- Acting as a principal or agent in the sale of insurance or annuities;
- Underwriting, dealing in, or making a market in securities; and
- Acquiring and controlling shares, assets, or other ownership interests in nonfinancial companies as part of a bona fide underwriting or merchant or investment banking activity (so-called "merchant banking" activities).

The proposed rule provides that a company may request a determination by the Board as to whether a particular activity is financial in nature for purpose of section 4(k) of the BHC Act. This procedure is substantially similar to the procedure outlined in § 225.88 of Regulation Y under which a financial holding company or other interested entity may request a determination from the Board that an activity is financial in nature or incidental to a financial activity. The Board expects this procedure might be used by those large or interconnected nonbank companies that may potentially be subject to designation by the Council under section 113 and that have questions concerning whether certain of their activities are financial in nature.

Section 102(a)(6) of the Dodd-Frank Act specifically provides that, if an activity is "financial in nature" under section 4(k) of the BHC Act, the activity is considered a financial activity for purposes of determining whether a nonbank company is predominantly engaged in financial activities. The Dodd-Frank Act does not impose any additional conditions, beyond those that may apply under section 4(k) or the Board's Regulation Y, for an activity to be considered a financial activity for purposes of the predominantly financial test.

Accordingly, the proposed rule broadly defines "financial activities" to include all activities that have been, or may be, determined to be "financial in nature" under section 4(k) regardless of where the activity is conducted by a company, regardless of whether a bank holding company or a foreign banking organization could conduct the activity under some legal authority other than section 4(k) of the BHC Act, and regardless of whether any Federal or State law other than section 4(k) of the BHC Act may prohibit or restrict the

conduct of the activity by a bank holding company.²⁹ For example, all investment activities that are permissible for a financial holding company under the merchant banking authority in section 4(k)(4)(H) of the BHC Act and the Board's implementing regulations (*see* 12 CFR 225.170 *et seq.*) are considered financial activities even if some portion of those activities could be conducted by a financial holding company under another or more limited investment authority (such as the authority in section 4(c)(6) of the BHC Act,³⁰ which allows bank holding companies to make passive, non-controlling investments in any company if the bank holding company's aggregate investment represents less than five percent of any class of voting securities and less than 25 percent of the total equity of the company).³¹ Likewise, all securities underwriting and dealing activities are considered financial activities for purposes of the proposed rule even if a bank holding company or other company affiliated with a depository institution may be limited in the amount of such activity it may conduct or may be prohibited from broadly engaging in the activity under the "Volcker Rule."³²

Finally, the Board notes that section 113(c) of the Dodd-Frank Act gives the Council the authority to subject the financial activities of *any* company to supervision by the Board if the Council determines that: (i) The company is organized and operates in such a manner to evade application of Title I of the Dodd-Frank Act; and (ii) material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the company's financial activities would pose a threat to the financial stability of the United States.³³ Companies that are engaged in activities that are financial in nature, but that alter the manner in which they conduct those activities for purposes of evading designation by the Council under section 113 and supervision by the Board, may be subject to designation by the Council under the special anti-evasion authority in section 113(c). Such an attempt to

²⁹ See § 225.301(d)(1) and (2) of the Proposed Rule.

³⁰ 12 U.S.C. 1843(c)(6).

³¹ Similarly, an activity that has been determined to be financial in nature under section 4(k), such as lending or insurance underwriting activities, and that is conducted by a foreign company overseas is considered a financial activity under the proposed rule even if a foreign banking organization might be able to conduct the activity overseas in reliance on section 4(c)(9) or 4(c)(13) of the BHC Act (12 U.S.C. 1843(c)(9) or (13)), rather than section 4(k).

³² 12 U.S.C. 1851 *et seq.*

³³ 12 U.S.C. 5323(c).

evade section 113 might occur, for example, if a large, interconnected company that is predominantly engaged in financial activities slightly alters the manner in which it conducts an activity that is financial in nature so that the activity does not comply with one of the restrictions that govern the conduct of the activity by a bank holding company for the purpose of reducing the company's financial revenues and assets under section 102(a)(6) and avoiding designation under section 113 of the Dodd-Frank Act.

B. *Significant Nonbank Financial Company and Significant Bank Holding Company*

As discussed above, the proposed rule also defines the terms "significant nonbank financial company" and "significant bank holding company," which are used in connection with the criteria the Council must consider in determining whether to require that a nonbank financial company become supervised by the Board under section 113 of the Dodd-Frank Act. A firm that is defined as a significant nonbank financial company or a significant bank holding company does not become subject to any additional supervision or regulation by virtue of that definition. Rather, relationships between firms and these significant nonbank financial companies and significant bank holding companies become a relevant factor in other determinations and additional information is collected about these relationships.

Specifically, the proposed rule defines a "significant nonbank financial company" to mean (i) any nonbank financial company supervised by the Board; and (ii) any other nonbank financial company that had \$50 billion or more in total consolidated assets as of the end of its most recently completed fiscal year.³⁴ The proposed rule defines a "significant bank holding company" as any bank holding company, or foreign bank that is treated 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 by the bank holding company or foreign bank on the appropriate Federal Reserve form).³⁵

In establishing these definitions, the Board considered its supervisory experience with bank holding companies as well as the fact that Congress established \$50 billion in total consolidated assets as the threshold at which bank holding companies should

³⁴ See § 225.302(b) of the Proposed Rule.

³⁵ See § 225.302(c) of the Proposed Rule.

be subject to enhanced prudential supervision without any special determination by the Council that the bank holding company's failure would pose a threat to financial stability.³⁶ The proposed definition is designed to provide a transparent standard that the Council may use in meeting its statutory obligation to consider the relationships of a nonbank financial company under consideration for designation with other "significant" firms. The Board notes that section 113 also permits the Council to consider a nonbank financial company's relationships with one or more other nonbank financial companies or bank holding companies that are not considered, by rule, to be significant whenever the Council determines that such risk-related information would be useful in assessing the potential for the company to pose systemic risks.³⁷

In addition to being relevant to the Council's determinations regarding whether to subject a nonbank financial company to Board supervision, the terms "significant nonbank financial company" and "significant bank holding company" are used in connection with the credit exposure reports that nonbank financial companies supervised by the Board and bank holding companies and foreign banks treated as bank holding companies with \$50 billion or more in assets must prepare and file under section 165(d)(2) of the Dodd-Frank Act.³⁸ The Board and the FDIC are jointly responsible for developing rules to implement these credit exposure reporting requirements. The Board expects to review the definition of "significant" nonbank financial companies and bank holding companies as part of the rulemaking to be conducted under section 165(d)(2) of the Dodd-Frank Act.

III. Request for Comments

The Board is interested in receiving comments on all aspects of the proposed rule. Comments also are specifically requested on the following matters:

1. With respect to the portions of the rule pertaining to whether a company is predominantly engaged in financial activities:

(a) Is the two-year test established in §§ 225.301(a)(1) and (2) appropriate, or are there other methods that should be used as a general matter to determine whether a company is predominantly engaged in financial activities?

(b) Is the use of consolidated year-end financial statements of a company prepared in accordance with GAAP or IFRS an appropriate basis for determining the

company's annual gross consolidated financial revenues and consolidated assets? Are there other methods that should be permitted? If so, what are the potential benefits and drawbacks of such other methods?

(c) Are the definitions contained in the proposed rule appropriate?

(d) Are there any other activities that should either be included or excluded from the definition of activities that are considered to be financial in nature?

(e) Are there other matters that the Board should address as part of the rulemaking to establish the requirements for determining if a company is predominantly engaged in financial activities as required by section 102(b) of the Dodd-Frank Act?

2. With respect to the proposed definitions of significant entities:

(a) Are the definitions contained in the proposed rule appropriate?

(b) Are there other matters that the Board should address as part of the rulemaking to define the terms "significant nonbank financial company" and "significant bank holding company"?

IV. Administrative Law Matters

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget ("OMB").

The collections of information that are proposed by this rulemaking are found in 12 CFR 225.301(f). Under this section, a company may request a determination from the Board as to whether a particular activity is financial in nature for purposes of this section. The request must be in writing and must include specific information as described in section 225.301(f)(2). Submission of such a request by a company is voluntary. Submitters of such requests are expected to be nonbank companies that believe the nature, scope, size, scale, concentration, interconnectedness or mix of its activities might cause the firm to be considered for designation by the Council under section 113 of the Dodd-Frank Act and that seek guidance as to whether the company is predominantly engaged in financial activities and, thus, eligible for such designation.

The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number will be assigned. It is estimated that the burden per response would be four hours and that there would be three respondents providing this information annually. Therefore,

the total amount of annual burden is estimated to be twelve hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

B. Regulatory Flexibility Act

In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* ("RFA"), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

In accordance with sections 102(b) and 102(a)(7) of the Dodd-Frank Act, the Board is proposing to amend Regulation Y (12 CFR 225 *et seq.*) to establish the criteria for determining if a company is "predominantly engaged in financial activities" and to define the terms "significant nonbank financial company" and "significant bank holding company."³⁹ The reasons and justifications for the proposed rule are described in the **SUPPLEMENTARY INFORMATION**. As discussed in the **SUPPLEMENTARY INFORMATION**, the criteria and definitions that would be established by the proposed rules are

³⁹ See 12 U.S.C. 5311(a)(7) and (b).

³⁶ See 12 U.S.C. 5365 *et seq.*

³⁷ See 12 U.S.C. 5323(a)(2)(K) and (b)(2)(K).

³⁸ 12 U.S.C. 5365(d)(2).

relevant to the authority of the Council to require that a nonbank financial company become subject to consolidated prudential supervision by the Board because material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could pose a threat to the financial stability of the United States.

Although asset size may not be the determinative factor of whether a company may pose systemic risks, it is an important consideration.⁴⁰ Under regulations issued by the Small Business Administration ("SBA"), firms within the "Finance and Insurance" sector are considered "small" if they have asset sizes that vary from \$7 million or less in assets to \$175 million or less in assets.⁴¹ The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. A financial firm that is at or below these size thresholds is not likely to be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such a firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities, is not likely to pose a threat to the financial stability of the United States.⁴²

In addition, as described in the Supplementary Information, the Board also has taken several steps to reduce the potential burden of the proposed rule on all companies that may be affected by the rule. These steps include allowing companies to use their consolidated, year-end financial statements prepared in accordance with GAAP or IFRS as the basis for determining whether they are predominantly engaged in financial activities, and the establishment of two rules of construction governing the application of the two-year test to revenues and assets attributable to a company's minority, less-than-

controlling equity investments in other unconsolidated entities.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board proposes to amend Regulation Y, 12 CFR part 225, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1844(b), 3106 and 3108, 1817(j)(13), 1818(b)), 1831i, 1972, Pub. L. 98-181, title IX, and 5311(a)(7) and (b).

2. Add Subpart N to part 225 to read as follows:

Subpart N—Nonbank financial companies supervised by the Board.

Sec.

225.300 Definitions.

225.301 Nonbank companies "predominantly engaged" in financial activities.

225.302 Significant nonbank financial companies and significant bank holding companies.

§ 225.300 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Applicable accounting standards.*—The term "applicable accounting standards" with respect to a company means U.S. generally accepted accounting principles (GAAP), international financial reporting standards (IFRS), or such other accounting standards applicable to the company that the Board determines are appropriate, that the company uses in the ordinary course of its business in preparing its consolidated financial statements.

(b) *Foreign nonbank financial company.*—The term "foreign nonbank financial company" means a company (other than a bank holding company, a foreign bank or company that is subject to the BHC Act by reason of section 8(a) of the International Banking Act of 1978, or a subsidiary of any of the foregoing) that is—

(1) Incorporated or organized in a country other than the United States; and

(2) Predominantly engaged (including through a branch in the United States) in financial activities as defined in § 225.301 of this subpart.

(c) *Nonbank financial company.*—The term "nonbank financial company" means a U.S. nonbank financial company and a foreign nonbank financial company.

(d) *Nonbank financial company supervised by the Board.*—The term "nonbank financial company supervised by the Board" means a nonbank financial company or other company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5323) should be supervised by the Board and for which such determination is still in effect.

(e) *State.*—The term "State" includes any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(f) *U.S. nonbank financial company.*—The term "U.S. nonbank financial company" means a company that—

(1) Is incorporated or organized under the laws of the United States or any State;

(2) Is predominantly engaged in financial activities as defined in § 225.301 of this subpart; and

(3) Is not—

(i) A bank holding company or a subsidiary of a bank holding company;

(ii) A Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*);

(iii) A national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company or a subsidiary of a bank holding company), security-based swap execution facility, or security-based swap data repository that, in each case, is registered with the Securities and Exchange Commission as such; or

(iv) A board of trade designated as a contract market (or parent thereof), a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company or a subsidiary of a bank holding company), a swap execution facility, or a swap data repository that, in each case, is registered with the Commodity Futures Trading Commission as such.

§ 225.301 Nonbank companies "predominantly engaged" in financial activities.

(a) *In general.* A company is "predominantly engaged in financial activities" for purposes of section 102 of

⁴⁰ See 76 FR 4555 (2011).

⁴¹ 13 CFR 121.201.

⁴² The terms "significant nonbank financial company" and "significant bank holding company" also are used in the credit exposure reporting provisions of section 165(d) of the Dodd-Frank Act, which apply to bank holding companies and foreign banks that are treated as a bank holding company that have \$50 billion or more in assets (as well as nonbank financial companies supervised by the Board). Bank holding companies and foreign banks subject to these credit exposure reporting requirements substantially exceed the \$175 million asset threshold at which a banking entity is considered "small" under regulations issued by the SBA.

the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5311) if—

(1) The consolidated annual gross financial revenues of the company in either of its two most recently completed fiscal years represent 85 percent or more of the company's consolidated annual gross revenues (as determined in accordance with applicable accounting standards) in that fiscal year;

(2) The consolidated total financial assets of the company as of the end of either of its two most recently completed fiscal years represent 85 percent or more of the company's consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of that fiscal year; or

(3) The Board determines, based on all the facts and circumstances, that—

(i) The consolidated annual gross financial revenues of the company represent 85 percent or more of the company's consolidated annual gross revenues; or

(ii) The consolidated total financial assets of the company represent 85 percent or more of the company's consolidated total assets.

(b) *Consolidated annual gross financial revenues.* For purposes of this section, the "consolidated annual gross financial revenues" of a company means that portion of the consolidated annual gross revenues of the company (as determined in accordance with applicable accounting standards) that were derived, directly or indirectly, by the company or any of its subsidiaries from—

(1) Activities that are financial in nature; or

(2) The ownership, control, or activities of an insured depository institution or any subsidiary of an insured depository institution.

(c) *Consolidated total financial assets.* For purposes of this section, the "consolidated total financial assets" of a company means that portion of the consolidated total assets of the company (as determined in accordance with applicable accounting standards) that are related to—

(1) Activities that are financial in nature; or

(2) The ownership, control, or activities of an insured depository institution or any subsidiary of an insured depository institution.

(d) *Activities that are financial in nature.* (1) *In general.* The following activities shall be considered to be financial in nature for purposes of this § 225.301—

(i) Any activity, wherever conducted, described in §§ 225.86(a), (b), or (c) of subpart I of this part;

(ii) Any activity, wherever conducted, determined to be financial in nature under, and in accordance with, § 225.86(e) of subpart I; and

(iii) Any other activity, wherever conducted, determined to be financial in nature by the Board, in consultation with the Secretary of the Treasury, under section 4(k)(1)(A) of the BHC Act (12 U.S.C. 1843(k)(1)(A)).

(2) *Effect of other authority.* Any activity described in paragraph (d)(1) of this section is considered financial in nature for purposes of this section regardless of whether—

(i) A bank holding company (including a financial holding company or a foreign bank) may be authorized to engage in the activity, or own or control shares of a company engaged in such activity, under any other provisions of the BHC Act or other Federal law including, but not limited to, section 4(a)(2), section 4(c)(5), section 4(c)(6), section 4(c)(7), section 4(c)(9), or section 4(c)(13) of the BHC Act (12 U.S.C. 1843(a)(2), (c)(5), (c)(6), (c)(7), (c)(9), or (c)(13)) and the Board's implementing regulations; or

(ii) Other provisions of Federal or State law or regulations prohibit, restrict, or otherwise place conditions on the conduct of the activity by a bank holding company (including a financial holding company or foreign bank) or bank holding companies generally.

(e) *Rules of construction.* For purposes of determining whether a company is predominantly engaged in financial activities under paragraph (a)(1) or (2) of this section, the following rules shall apply—

(1) *Investments that are not consolidated.* Except as provided in paragraph (e)(2) of this section, revenues derived from, or assets related to, an equity investment by the company in another company the financial statements of which are not consolidated with those of the company under applicable accounting standards shall be treated as revenues derived from, and assets related to, activities that are financial in nature if the other company is predominantly engaged in financial activities as defined in paragraph (a)(1) or (2) of this section.

(2) *Treatment of de minimis investments.* A company may treat revenues derived from, or assets related to, an equity investment by the company in another company as revenues or assets not derived from, or related to, activities that are financial in nature, regardless of the type of

activities conducted by the other company, if—

(i) The company's aggregate ownership interest in the other company constitutes less than five percent of any class of outstanding voting shares, and less than 25 percent of the total equity, of the other company;

(ii) The financial statements of the other company are not consolidated with those of the company under applicable accounting standards;

(iii) The company's investment in the other company is not held in connection with the conduct by the company or any of its subsidiaries of an activity that is considered to be financial in nature for purposes of this subpart (such as, for example, investment advisory activities or merchant banking activities);

(iv) The other company is not—

(A) A depository institution or a subsidiary of a depository institution;

(B) A bank holding company or a savings and loan holding company;

(C) A foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)));

(D) Any of the following entities registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*)—

(1) A broker or dealer;

(2) A clearing agency;

(3) A nationally recognized statistical rating organization;

(4) A transfer agent;

(5) An exchange registered as a national securities exchange; or

(6) A security-based swap execution facility, security-based swap data repository, or security-based swap dealer;

(E) An investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*);

(F) Any of the following entities registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*)—

(1) A futures commission merchant;

(2) A commodity pool operator;

(3) A commodity trading advisor;

(4) An introducing broker;

(5) A derivatives clearing organization;

(6) A retail foreign exchange dealer; or

(7) A swap execution facility, swap data repository, or swap dealer;

(G) A board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); or

(H) An insurance company subject to supervision by a State or foreign insurance authority; and

(v) The aggregate dollar amount of revenues or assets treated by the company as not financially related under this paragraph (e)(2) does not exceed 5 percent of the consolidated annual gross financial revenues of the company or the consolidated total financial assets of the company, respectively, in that year.

(f) *Requests regarding activities that may be financial in nature.* (1) *In general.* A company may request a determination from the Board as to whether a particular activity is financial in nature for purposes of this section.

(2) *Required information.* A request submitted under this paragraph (f) must be in writing and must—

(i) Identify and describe the activity for which the determination is sought, specifically describing what the activity involves and how the activity is conducted;

(ii) Explain in detail why the activity should or should not be considered financial in nature for purposes of this section; and

(iii) Provide information supporting the requested determination and any other information required by the Board concerning the activity.

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

(a) *In general.* This section defines the terms “significant nonbank financial company” and “significant bank holding company” as such terms are used in—

(1) Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) (12 U.S.C. 5323) relating to the designation of nonbank financial companies by the Financial Stability Oversight Council for supervision by the Board; and

(2) Section 165(d)(2) of the Dodd-Frank Act (12 U.S.C. 5365(d)(2)) relating to the credit exposure reports required to be filed by—

(i) A nonbank financial company supervised by the Board; and

(ii) A bank holding company or foreign bank subject to the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) that has \$50 billion or more in total consolidated assets.

(b) *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.

(c) *Significant bank holding company.*

A “significant bank holding company” means any bank holding company or foreign bank treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) that had \$50 billion or more in total consolidated assets as of the end of the most recently completed calendar year, as reported—

(1) In the case of a bank holding company (other than a foreign banking organization), on the Federal Reserve’s FR Y–9C (Consolidated Financial Statements for Bank Holding Companies); and

(2) In the case of a foreign banking organization that is or is treated as a bank holding company, on the Federal Reserve’s Form FR Y–7Q (Capital and Asset Report for Foreign Banking Organizations).

By order of the Board of Governors of the Federal Reserve System, February 7, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–2978 Filed 2–10–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD37

Amendments to Deposit Insurance Regulations: Deposit Insurance Coverage Training; SMDIA Notification

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The FDIC is proposing a rule that would promote public confidence in Federal deposit insurance by providing depositors with improved access to accurate information about FDIC insurance coverage of their accounts at insured depository institutions (IDIs). The proposed rule would accomplish this goal in three ways. First, it would require certain IDI personnel to complete FDIC-provided training on the fundamentals of FDIC deposit insurance coverage. These IDI personnel would include any employee with authority to open deposit accounts and/or respond to customer questions about FDIC insurance coverage (hereafter “employees”). Second, the

proposed rule would require IDIs to implement procedures so that employees, when opening a new deposit account, inquire whether the customer has an ownership interest in any other account at the IDI and, if so, whether the customer’s aggregate ownership interest in deposit accounts, including the new account, exceeds the Standard Maximum Deposit Insurance Amount (“SMDIA”). If this is the case, then the IDI employee would be required to provide the customer with a copy of the FDIC’s publication, *Deposit Insurance Summary*. The proposed rule would apply to deposit accounts opened in person at the IDI, by telephone, mail, and via the Internet or other technology. Third, the rule would require IDIs to provide a link to the FDIC’s Electronic Deposit Insurance Estimator (“EDIE”) on any Web site the IDI maintains for use by deposit customers.

DATES: Written comments must be received by the FDIC no later than April 12, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Web site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments.

- *E-mail:* comments@fdic.gov.

Include RIN # 3064–AD37 in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, *Attention:* Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station located at the rear of the FDIC’s 550 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions must include the agency name and use the title “Part 330—Deposit Insurance Education.” All comments received will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Martin W. Becker, Senior Consumer Affairs Specialist, Deposit Insurance Section, Division of Supervision and Consumer Protection, (202) 898–6644, mbecker@fdic.gov; or Catherine A.