§ 211.7 Voluntary liquidation of Edge and agreement corporations.

(a) *Prior notice.* An Edge or agreement corporation desiring voluntarily to discontinue normal business and dissolve, shall provide the Board with 45 days' prior written notice of its intent to do so.

(b) *Waiver of notice period.* The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented.

§ 211.8 Investments and activities abroad.

(a) *General policy.* Activities abroad, whether conducted directly or indirectly, shall be confined to activities of a banking or financial nature and those that are necessary to carry on such activities. In doing so, investors[4] shall at all times act in accordance with high standards of banking or financial prudence, having due regard for diversification of risks, suitable liquidity, and adequacy of capital. Subject to these considerations and the other provisions of this section, it is the Board's policy to allow activities abroad to be organized and operated as best meets corporate policies.

(b) *Direct investments by member banks.* A member bank's direct investments under section 25 of the FRA (12 U.S.C. 601 *et seq.*) shall be limited to:

(1) Foreign banks;

(2) Domestic or foreign organizations formed for the sole purpose of holding shares of a foreign bank;

(3) Foreign organizations formed for the sole purpose of performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank; and

(4) Subsidiaries established pursuant to § 211.4(a)(8) of this part.

(c) *Eligible investments.* Subject to the limitations set out in paragraphs (b) and (d) of this section, an investor may, directly or indirectly:

(1) *Investment in subsidiary.* Invest in a subsidiary that engages solely in activities listed in § 211.10 of this part, or in such other activities as the Board has determined in the circumstances of a particular case are permissible; provided that, in the case of an acquisition of a going concern, existing activities that are not otherwise permissible for a subsidiary may account for not more than 5 percent of either the consolidated assets or consolidated revenues of the acquired organization;

(2) *Investment in joint venture.* Invest in a joint venture; provided that, unless otherwise permitted by the Board, not more than 10 percent of the joint venture's consolidated assets or consolidated revenues are attributable to activities not listed in § 211.10 of this part; and

(3) *Portfolio investments.* Make portfolio investments in an organization, provided that:

(i) *Individual investment limits.* The total direct and indirect portfolio investments by the investor and its affiliates in an organization engaged in activities that are not permissible for joint ventures, when combined with all other shares in the organization held under any other authority, do not exceed:

(A) 40 percent of the total equity of the organization; or

(B) 19.9 percent of the organization's voting shares.

(ii) *Aggregate Investment Limit.* Portfolio investments made under authority of this subpart shall be subject to the aggregate equity limit of § 211.10(a)(15)(iii).

(iii) *Loans and extensions of credit.* Any loans and extensions of credit made by an investor or its affiliates to the organization are on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the investor or its affiliates and nonaffiliated persons; and

(iv) *Protecting shareholder rights.* Nothing in this paragraph (c)(3) shall prohibit an investor from otherwise exercising rights it may have as shareholder to protect the value of its investment, so long as the exercise of such rights does not result in the investor's direct or indirect control of the organization.

(d) *Investment limit.* In calculating the amount that may be invested in any

[4] For purposes of this section and §§ 211.9 and 211.10 of this part, a direct subsidiary of a member bank is deemed to be an investor.

organization under this section and §§ 211.9 and 211.10 of this part, there shall be included any unpaid amount for which the investor is liable and any investments in the same organization held by affiliates under any authority.

(e) *Divestiture.* An investor shall dispose of an investment promptly (unless the Board authorizes retention) if:

(1) The organization invested in:

(i) Engages in impermissible activities to an extent not permitted under paragraph (c) of this section; or

(ii) Engages directly or indirectly in other business in the United States that is not permitted to an Edge corporation in the United States; provided that an investor may:

(A) Retain portfolio investments in companies that derive no more than 10 percent of their total revenue from activities in the United States; and

(B) Hold up to 5 percent of the shares of a foreign company that engages directly or indirectly in business in the United States that is not permitted to an Edge corporation; or

(2) After notice and opportunity for hearing, the investor is advised by the Board that such investment is inappropriate under the FRA, the BHC Act, or this subpart.

(f) *Debts previously contracted.* Shares or other ownership interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this section; provided that such interests shall be disposed of promptly but in no event later than two years after their acquisition, unless the Board authorizes retention for a longer period.

(g) *Investments made through debt-for-equity conversions*—(1) *Permissible investments.* A bank holding company may make investments through the conversion of sovereign-or private-debt obligations of an eligible country, either through direct exchange of the debt obligations for the investment, or by a payment for the debt in local currency, the proceeds of which, including an additional cash investment not exceeding in the aggregate more than 10 percent of the fair value of the debt obligations being converted as part of such investment, are used to purchase the following investments:

(i) *Public-sector companies.* A bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interests in) any foreign company located in an eligible country, if the shares are acquired from the government of the eligible country or from its agencies or instrumentalities.

(ii) *Private-sector companies.* A bank holding company may acquire up to and including 40 percent of the shares, including voting shares, of (or other ownership interests in) any other foreign company located in an eligible country subject to the following conditions:

(A) A bank holding company may acquire more than 25 percent of the voting shares of the foreign company only if another shareholder or group of shareholders unaffiliated with the bank holding company holds a larger block of voting shares of the company;

(B) The bank holding company and its affiliates may not lend or otherwise extend credit to the foreign company in amounts greater than 50 percent of the total loans and extensions of credit to the foreign company; and

(C) The bank holding company's representation on the board of directors or on management committees of the foreign company may be no more than proportional to its shareholding in the foreign company.

(2) *Investments by bank subsidiary of bank holding company.* Upon application, the Board may permit an indirect investment to be made pursuant to this paragraph (g) through an insured bank subsidiary of the bank holding company, where the bank holding company demonstrates that such ownership is consistent with the purposes of the FRA. In granting its consent, the Board may impose such conditions as it deems necessary or appropriate to prevent adverse effects, including prohibiting loans from the bank to the company in which the investment is made.

(3) *Divestiture*—(i) *Time limits for divestiture.* A bank holding company shall divest the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (g) within the longer of:

(A) Ten years from the date of acquisition of the investment, except that the Board may extend such period if, in the Board's judgment, such an extension would not be detrimental to the public interest; or

(B) Two years from the date on which the bank holding company is permitted to repatriate in full the investment in the foreign company.

(ii) *Maximum retention period.* Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) Divestiture shall occur within 15 years of the date of acquisition of the shares of, or other ownership interests in, any company acquired pursuant to this paragraph (g); and

(B) A bank holding company may retain such shares or ownership interests if such retention is otherwise permissible at the time required for divestiture.

(iii) *Report to Board.* The bank holding company shall report to the Board on its plans for divesting an investment made under this paragraph (g) two years prior to the final date for divestiture, in a manner to be prescribed by the Board.

(iv) *Other conditions requiring divestiture.* All investments made pursuant to this paragraph (g) are subject to paragraph (e) of this section requiring prompt divestiture (unless the Board upon application authorizes retention), if the company invested in engages in impermissible business in the United States that exceeds in the aggregate 10 percent of the company's consolidated assets or revenues calculated on an annual basis; provided that such company may not engage in activities in the United States that consist of banking or financial operations (as defined in § 211.23(f)(5)(iii)(B)) of this part, or types of activities permitted by regulation or order under section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)), except under regulations of the Board or with the prior approval of the Board.

(4) *Investment procedures*—(i) *General consent.* Subject to the other limitations of this paragraph (g), the Board grants its general consent for investments made under this paragraph (g) if the total amount invested does not exceed the greater of $25 million or 1 percent of the tier 1 capital of the investor.

(ii) All other investments shall be made in accordance with the procedures of § 211.9(f) and (g) of this part, requiring prior notice or specific consent.

(5) *Conditions*—(i) *Name.* Any company acquired pursuant to this paragraph (g) shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates.

(ii) *Confidentiality.* Neither the bank holding company nor its affiliates shall provide to any company acquired pursuant to this paragraph (g) any confidential business information or other information concerning customers that are engaged in the same or related lines of business as the company.

[66 FR 54374, Oct. 26, 2001, as amended at 66 FR 58655, Nov. 23, 2001]

§ 211.9 Investment procedures.

(a) *General provisions.*[1] Direct and indirect investments shall be made in accordance with the general consent, limited general consent, prior notice, or specific consent procedures contained in this section.

(1) *Minimum capital adequacy standards.* Except as the Board may otherwise determine, in order for an investor to make investments pursuant to the procedures set out in this section, the investor, the bank holding company, and the member bank shall be in compliance with applicable minimum standards for capital adequacy set out in the capital rule; provided that, if the investor is an Edge or agreement corporation, the minimum capital required is total and tier 1 capital ratios of 8 percent and 4 percent, respectively.

(2) *Composite rating.* Except as the Board may otherwise determine, in order for an investor to make investments under the general consent or limited general consent procedures of paragraphs (b) and (c) of this section,

[1] When necessary, the provisions of this section relating to general consent and prior notice constitute the Board's approval under section 25A(8) of the FRA (12 U.S.C. 615) for investments in excess of the limitations therein based on capital and surplus.