

Federal Reserve System

§ 225.11

total consolidated assets, and total assets of a bank holding company for purposes of §§ 225.4(b)(2)(iii)(A) and (B), 225.14(a)(1)(v)(A)(I) and (2), 225.14(a)(1)(vi), 225.23(a)(1)(iii)(A)(I) and (2), 225.24(a)(2)(iv) and (v), and 225.28(b)(11)(vi) shall be determined based on the lesser of each such amount as of December 31, 2019, and as of the otherwise applicable asset measurement date of the relevant paragraph.

(b) Except as provided in paragraph (c) of this section and subject to the provisions of paragraph (d) of this section, from December 2, 2020, through December 31, 2021, for purposes of determining the applicability of §§ 224.14(c)(6)(ii), 225.17(a)(6), and 225.23(c)(5)(ii) of this part and appendix C to this part, the *pro forma* consolidated assets of a bank holding company and the consolidated risk-weighted assets of a bank holding company immediately following consummation of a transaction each shall be calculated as the lesser of:

(1) Such amount calculated as the sum of the assets of each company involved in the proposed business combination, as well as any company with which any such company has combined since December 31, 2019, as of December 31, 2019; and

(2) Such amount calculated as the sum of the assets of each company involved in the proposed business combination as of the end of the most recent calendar quarter.

(c) The relief provided under paragraphs (a) and (b) of this section does not apply to a bank holding company if the Board determines that permitting the bank holding company to determine its assets in accordance with that paragraph would not be commensurate with the risk profile of the bank holding company. When making this determination, the Board will consider all relevant factors, including the extent of asset growth of the bank holding company since December 31, 2019; the causes of such growth, including whether growth occurred as a result of mergers or acquisitions; whether such growth is likely to be temporary or permanent; whether the bank holding company has become involved in any additional activities since December

31, 2019; the asset size of any parent companies; and the type of assets held by the bank holding company. In making a determination pursuant to this section, the Board will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 263.202.

(d) Nothing in this section limits the discretion of the Board or its delegatee to disallow the use of any expedited action process, require the submission of additional information in connection with a notice or application, or consider the ability of a bank holding company filing a notice or application under this part to comply with any statutory or regulatory requirements that may be applicable to the bank holding company upon expiration of the relief provided by this section.

[85 FR 77361, Dec. 2, 2020]

Subpart B—Acquisition of Bank Securities or Assets

SOURCE: Reg. Y, 62 FR 9324, Feb. 28, 1997, unless otherwise noted.

§ 225.11 Transactions requiring Board approval.

The following transactions require the Board's prior approval under section 3 of the Bank Holding Company Act except as exempted under § 225.12 or as otherwise covered by § 225.17 of this subpart:

(a) *Formation of bank holding company.* Any action that causes a bank or other company to become a bank holding company.

(b) *Acquisition of subsidiary bank.* Any action that causes a bank to become a subsidiary of a bank holding company.

(c) *Acquisition of control of bank or bank holding company securities.* (1) The acquisition by a bank holding company of direct or indirect ownership or control of any voting securities of a bank or bank holding company, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the bank or bank holding company.

(2) An acquisition includes the purchase of additional securities through

§ 225.12

12 CFR Ch. II (1–1–23 Edition)

the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the bank holding company's proportional share of any class of voting securities.

(d) *Acquisition of bank assets.* The acquisition by a bank holding company or by a subsidiary thereof (other than a bank) of all or substantially all of the assets of a bank.

(e) *Merger of bank holding companies.* The merger or consolidation of bank holding companies, including a merger through the purchase of assets and assumption of liabilities.

(f) *Transactions by foreign banking organization.* Any transaction described in paragraphs (a) through (e) of this section by a foreign banking organization that involves the acquisition of an interest in a U.S. bank or in a bank holding company for which application would be required if the foreign banking organization were a bank holding company.

§ 225.12 Transactions not requiring Board approval.

The following transactions do *not* require the Board's approval under § 225.11 of this subpart:

(a) *Acquisition of securities in fiduciary capacity.* The acquisition by a bank or other company (other than a trust that is a company) of control of voting securities of a bank or bank holding company in good faith in a fiduciary capacity, unless:

(1) The acquiring bank or other company has sole discretionary authority to vote the securities and retains this authority for more than two years; or

(2) The acquisition is for the benefit of the acquiring bank or other company, or its shareholders, employees, or subsidiaries.

(b) *Acquisition of securities in satisfaction of debts previously contracted.* The acquisition by a bank or other company of control of voting securities of a bank or bank holding company in the regular course of securing or collecting a debt previously contracted in good faith, if the acquiring bank or other company divests the securities within two years of acquisition. The Board or Reserve Bank may grant requests for up to three one-year extensions.

(c) *Acquisition of securities by bank holding company with majority control.* The acquisition by a bank holding company of additional voting securities of a bank or bank holding company if more than 50 percent of the outstanding voting securities of the bank or bank holding company is lawfully controlled by the acquiring bank holding company prior to the acquisition.

(d) *Acquisitions involving bank mergers and internal corporate reorganizations—*

(1) *Transactions subject to Bank Merger Act.* The merger or consolidation of a subsidiary bank of a bank holding company with another bank, or the purchase of assets by the subsidiary bank, or a similar transaction involving subsidiary banks of a bank holding company, if the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c)) and does not involve the acquisition of shares of a bank. This exception does not include:

(i) The merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank; or

(ii) Any transaction requiring the Board's prior approval under § 225.11(e) of this subpart.

The Board may require an application under this subpart if it determines that the merger or consolidation would have a significant adverse impact on the financial condition of the bank holding company, or otherwise requires approval under section 3 of the BHC Act.

(2) *Certain acquisitions subject to Bank Merger Act.* The acquisition by a bank holding company of shares of a bank or company controlling a bank or the merger of a company controlling a bank with the bank holding company, if the transaction is part of the merger or consolidation of the bank with a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, or is part of the purchase of substantially all of the assets of the bank by a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, and if: