

TITLE 12 - BANKS AND BANKING**CHAPTER 32 - FOREIGN BANK PARTICIPATION IN DOMESTIC MARKETS****§ 3106. Nonbanking activities of foreign banks****(a) Applicability of Bank Holding Company Acts**

Except as otherwise provided in this section (1) any foreign bank that maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to section 1850 of this title and chapter 22 of this title in the same manner and to the same extent that bank holding companies are subject to such provisions.

(b) Ownership or control of shares of nonbanking companies for certain period

Until December 31, 1985, a foreign bank or other company to which subsection (a) of this section applies on September 17, 1978, may retain direct or indirect ownership or control of any voting shares of any nonbanking company in the United States that it owned, controlled, or held with power to vote on September 17, 1978, or engage in any nonbanking activities in the United States in which it was engaged on such date.

(c) Engagement in nonbanking activities after certain period

(1) After December 31, 1985, a foreign bank or other company to which subsection (a) of this section applies on September 17, 1978, or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978, may continue to engage in nonbanking activities in the United States in which directly or through an affiliate it was lawfully engaged on July 26, 1978 (or on a date subsequent to July 26, 1978, in the case of activities carried on as the result of the direct or indirect acquisition, pursuant to a binding written contract entered into on or before July 26, 1978, of another company engaged in such activities at the time of acquisition), and may engage directly or through an affiliate in nonbanking activities in the United States which are covered by an application to engage in such activities which was filed on or before July 26, 1978; except that the Board by order, after opportunity for hearing, may terminate the authority conferred by this subsection on any such foreign bank or company to engage directly or through an affiliate in any activity otherwise permitted by this subsection if it determines having due regard to the purposes of this chapter and the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States. Notwithstanding subsection (a) of this section, a foreign bank or company referred to in this subsection may retain ownership or control of any voting shares (or, where necessary to prevent dilution of its voting interest, acquire additional voting shares) of any domestically-controlled affiliate covered in 1978 which since July 26, 1978, has engaged in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States, notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities. Except in the case of affiliates described in the preceding sentence, nothing in this subsection shall be construed to authorize any foreign bank or company referred to in this subsection, or any affiliate thereof, to engage in activities authorized by this subsection through the acquisition, pursuant to a contract entered into after July 26, 1978, of any interest in or the assets of a going concern engaged in such activities. Any foreign bank or company that is authorized to engage in any activity pursuant to this subsection but, as a result of action of the Board, is required to terminate such activity may retain the ownership or control of shares in any company carrying on such activity for a period of two years from the date on which its authority was so terminated by the Board. As used in this subsection, the term "affiliate" shall mean any company more than 5 per centum of whose voting

shares is directly or indirectly owned or controlled or held with power to vote by the specified foreign bank or company, and the term “domestically-controlled affiliate covered in 1978” shall mean an affiliate organized under the laws of the United States or any State thereof if (i) no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and (ii) no more than 20 per centum of the number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank. For the purpose of the preceding sentence, the term “persons affiliated with any such foreign bank” shall mean (A) any person who is or was an employee, officer, agent, or director of such foreign bank or who otherwise has or had such a relationship with such foreign bank that would lead such person to represent the interests of such foreign bank, and (B) in the case of any director of such domestically controlled affiliate covered in 1978, any person in favor of whose election as a director votes were cast by less than two-thirds of all shares voting in connection with such election other than shares owned or controlled, directly or indirectly, by any such foreign bank.

(2) The authority conferred by this subsection on a foreign bank or other company shall terminate 2 years after the date on which such foreign bank or other company becomes a “bank holding company” as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 (a)); except that the Board may, upon application of such foreign bank or other company, extend the 2-year period for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall exceed 3 years in the aggregate.

(3) Termination of grandfathered rights.—

(A) In general.— If any foreign bank or foreign company files a declaration under section 4(l)(1)(C) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843 (l)(1)(C)], any authority conferred by this subsection on any foreign bank or company to engage in any activity that the Board has determined to be permissible for financial holding companies under section 4(k) of such Act [12 U.S.C. 1843 (k)] shall terminate immediately.

(B) Restrictions and requirements authorized.— If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity that the Board has determined to be permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843 (k)] has not filed a declaration with the Board of its status as a financial holding company under such section by the end of the 2-year period beginning on November 12, 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 1828a of this title.

(d) Construction of terms

Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a “bank” for the purposes of any provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or section 1850 of this title, except that any such branch, agency or commercial lending company subsidiary shall be deemed a “bank” or “banking subsidiary”, as the case may be, for the purposes of applying the prohibitions of chapter 22 of this title and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843 (c)(1), (2), (3), and (4)) to any foreign bank or other company to which subsection (a) of this section applies.

(Pub. L. 95–369, § 8(a)–(d), Sept. 17, 1978, 92 Stat. 622, 623; Pub. L. 97–320, title VII, §§ 704, 705, Oct. 15, 1982, 96 Stat. 1539; Pub. L. 100–86, title II, § 204, Aug. 10, 1987, 101 Stat. 584; Pub. L. 102–242,

title II, § 207, Dec. 19, 1991, 105 Stat. 2295; Pub. L. 106–102, title I, § 141, Nov. 12, 1999, 113 Stat. 1383.)

References in Text

The Bank Holding Company Act of 1956, referred to in subsecs. (a), (c), and (d), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

For definition of “this chapter”, referred to in subsec. (c), see References in Text note set out under section 3101 of this title.

Amendments

1999—Subsec. (c)(3). Pub. L. 106–102 added par. (3).

1991—Subsec. (a). Pub. L. 102–242 substituted “to such provisions” for “thereto, except that any such foreign bank or company shall not by reason of this subsection be deemed a bank holding company for purposes of section 3 of the Bank Holding Company Act of 1956”.

1987—Subsec. (c). Pub. L. 100–86 designated existing provisions as par. (1) and added par. (2).

1982—Subsec. (c). Pub. L. 97–320, § 704, inserted “or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978” after “September 17, 1978,”.

Pub. L. 97–320, § 705(a), substituted provision that the term “domestically-controlled affiliate covered in 1978” shall mean an affiliate organized under the laws of the United States or any State thereof if no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and no more than 20 per centum of the number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank, for provision that it meant any affiliate the majority of whose voting shares was owned by a company or group of companies organized under the laws of the United States or any State thereof, if it had been under continuous domestic majority-controlling ownership since July 26, 1978, and if a foreign bank or group of foreign banks did not own or control, directly or indirectly, 25 per centum or more of its voting shares, and defined “persons affiliated with any such foreign bank”.

Pub. L. 97–320, § 705(b), substituted “since July 26, 1978, has engaged” for “engages” before “in the business of underwriting”, and inserted “, notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities” after “and other securities in the United States”.

Effective Date of 1999 Amendment

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.