APPENDIX A

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 1500

Administrative practice and procedure, Banks, Banking, Holding companies.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of Chapter II, Title 12 of the Code of Federal Regulations as follows:

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

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1843(k), 1844(b), 1972(*l*), 2903, 2905, 3106, 3108, 3310, 3331-3351, 3907, and 3909.

2. Section 225.1(c)(10) is revised to read as follows:

§ 225.1 Authority, purpose, and scope.

* * * * *

(c) * * *

(10) Subpart J governs the conduct of merchant banking investment activities by financial holding companies as permitted under section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)).

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3. In Subpart J, §§ 225.170 through 225.175 are revised and new §§ 225.176 and 225.177 are added to read as follows:

Subpart J–Merchant Banking Investments

225.170 What type of investments are permitted by this subpart, and under what conditions may they be made?

225.171 What are the limitations on managing or operating a portfolio company held as a merchant banking investment?

225.172 What are the holding periods permitted for merchant banking investments?

225.173 How are investments in private equity funds treated under this subpart?

225.174 What aggregate thresholds apply to merchant banking investments?

225.175 What risk management, record keeping and reporting policies are required to make merchant banking investments?

225.176 How do the statutory cross marketing and sections 23A and B limitations apply to merchant banking investments?

225.177 Definitions.

Subpart J–Merchant Banking Investments

§ 225.170 - What type of investments are permitted by this subpart, and under what conditions may they be made?

(a) What types of investments are permitted by this subpart? Section 4(k)(4)(H) of the Bank Holding Company Act and this subpart authorize a financial holding company, directly or indirectly and as principal or on behalf of one or more persons, to acquire or control any amount of shares, assets or ownership interests of a company or other entity that is engaged in any activity not otherwise authorized for the financial holding company under section 4 of the Bank Holding Company Act. For purposes of this subpart, shares, assets or ownership interests acquired or controlled under section 4(k)(4)(H) and this subpart are referred to as "merchant banking investments." A financial holding company may not directly or indirectly acquire or control any merchant banking investment except in compliance with the requirements of this subpart.

(b) Must the investment be a bona fide merchant banking investment? The acquisition or control of shares, assets or ownership interests under this subpart is not permitted unless it is part of a bona fide underwriting or merchant or investment banking activity. (c) What types of ownership interests may be acquired? Shares, assets or ownership interests of a company or other entity include any debt or equity security, warrant, option, partnership interest, trust certificate or other instrument representing an ownership interest in the company or entity, whether voting or nonvoting.

(d) Where in a financial holding company may merchant banking investments be made? A financial holding company and any subsidiary (other than a depository institution or

subsidiary of a depository institution) may acquire or control merchant banking investments. A financial holding company and its subsidiaries may not acquire or control merchant banking investments on behalf of a depository institution or subsidiary of a depository institution.

(e) May assets other than shares be held directly? A financial holding company may not under this subpart acquire or control assets, other than debt or equity securities or other ownership interests in a company, unless:

(1) The assets are held by or promptly transferred to a portfolio company;

(2) The portfolio company maintains policies, books and records, accounts, and other indicia of corporate, partnership or limited liability organization and operation that are separate from the financial holding company and limit the legal liability of the financial holding company for obligations of the portfolio company; and

(3) The portfolio company has management that is separate from the financial holding company to the extent required by § 225.171.

(f) What type of affiliate is required for a financial holding company to make merchant banking investments? A financial holding company may not acquire or control merchant banking investments under this subpart unless the financial holding company qualifies under at least one of the following paragraphs:

(1) Securities affiliate. The financial holding company is or has an affiliate that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78c, 78*o*, 78*o*-4) as:

(i) A broker or dealer; or

(ii) A municipal securities dealer, including a separately identifiable department or division of a bank that is registered as a municipal securities dealer.

(2) Insurance affiliate with an investment adviser affiliate. The financial holding company controls:

(i) An insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance), or providing and issuing annuities; and

(ii) A company that:

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

(B) Provides investment advice to an insurance company.

§ 225.171 - What are the limitations on managing or operating a portfolio company held as a merchant banking investment?

(a) May a financial holding company routinely manage or operate a portfolio company? Except as permitted in paragraph (e) of this section, a financial holding company may not routinely manage or operate any portfolio company.

(b) When does a financial holding company routinely manage or operate a company?

(1) Examples of routine management or operation.

(i) Executive officer interlocks at the portfolio company. A financial holding company routinely manages or operates a portfolio company if any director, officer or employee of

the financial holding company serves as or has the responsibilities of an executive officer of the portfolio company.

(ii) Interlocks by executive officers of the financial holding company.

(A) Prohibition. A financial holding company routinely manages or operates a portfolio company if any executive officer of the financial holding company serves as or has the responsibilities of an officer or employee of the portfolio company.

(B) Definition. For purposes of paragraph (A), the term "financial holding company" includes the financial holding company and only the following subsidiaries of the financial holding company:

(*1*) A securities broker or dealer registered under the Securities Exchange Act of 1934;

(*2*) A depository institution;

(*3*) An affiliate that engages in merchant banking activities under this subpart or insurance company investment activities under section 4(k)(4)(I) of the Bank Holding Company Act;

(*4*) A small business investment company (as defined in section 302(b) of the Small Business Investment Act of 1958) controlled by the financial holding company or by any depository institution controlled by the financial holding company; and

(*5*) Any other affiliate that engages in significant equity investment activities that are subject to a special capital charge under the capital adequacy rules or guidelines of the Board.

(iii) Covenants regarding ordinary course of business. A financial holding company routinely manages or operates a portfolio company if any covenant or other contractual arrangement exists between the financial holding company and the portfolio company that would restrict the portfolio company's ability to make routine business decisions, such as entering into transactions in the ordinary course of business or hiring officers or employees other than executive officers.

(2) Presumptions of routine management or operation. A financial holding company is presumed to routinely manage or operate a portfolio company if:

(i) Any director, officer, or employee of the financial holding company serves as or has the responsibilities of an officer (other than an executive officer) or employee of the portfolio company; or

(ii) Any officer or employee of the portfolio company is supervised by any director, officer, or employee of the financial holding company (other than in that individual's capacity as a director of the portfolio company).

(c) How may a financial holding company rebut a presumption that it is routinely managing or operating a portfolio company? A financial holding company may rebut a presumption that it is routinely managing or operating a portfolio company under paragraph (b)(2) of this section by presenting information to the Board demonstrating to the Board's satisfaction that the financial holding company is not routinely managing or operating the portfolio company.

(d) What arrangements do not involve routinely managing or operating a portfolio company?--(1) Director representation at portfolio companies. A financial holding company may select any or all of the directors of a portfolio company or have one or more of its directors, officers, or employees serve as directors of a portfolio company if:

(i) The portfolio company employs officers and employees responsible for routinely managing and operating the company; and

(ii) The financial holding company does not routinely manage or operate the portfolio company, except as permitted in paragraph (e) of this section.

(2) Covenants or other provisions regarding extraordinary events. A financial holding company may, by virtue of covenants or other written agreements with a portfolio company, restrict the ability of the portfolio company, or require the portfolio company to consult with or obtain the approval of the financial holding company, to take actions outside of the ordinary course of the business of the portfolio company. Examples of the types of actions that may be subject to these types of covenants or agreements include, but are not limited to, the following:

(i) The acquisition of significant assets or control of another company by the portfolio company or any of its subsidiaries;

(ii) Removal or selection of an independent accountant or auditor or investment banker by the portfolio company;

(iii) Significant changes to the business plan or accounting methods or policies of the portfolio company;

(iv) Removal or replacement of any or all of the executive officers of the portfolio company;

(v) The redemption, authorization or issuance of any equity or debt securities (including options, warrants or convertible shares) of the portfolio company or any borrowing by the portfolio company outside of the ordinary course of business;

(vi) The amendment of the articles of incorporation or by-laws (or similar governing documents) of the portfolio company; and

(vii) The sale, merger, consolidation, spin-off, recapitalization, liquidation, dissolution or sale of substantially all of the assets of the portfolio company or any of its significant subsidiaries.

(3) Providing advisory and underwriting services to, and having consultations with, a portfolio company. A financial holding company may:

(i) Provide financial, investment and management consulting advice to a portfolio company in a manner consistent with and subject to any restrictions on such activities contained in sections 225.28(b)(6) or 225.86(b)(1) of this part (12 CFR 225.28(b)(6) and 225.86(b)(1));

(ii) Provide assistance to a portfolio company in connection with the underwriting or private placement of its securities, including acting as the underwriter or placement agent for such securities; and

(iii) Meet with the officers or employees of a portfolio company to monitor or provide advice with respect to the portfolio company's performance or activities.

(e) When may a financial holding company routinely manage or operate a portfolio company?--(1) Special circumstances required. A financial holding company may routinely manage or operate a portfolio company only when intervention by the financial holding company is necessary or required to obtain a reasonable return on the financial holding company's investment in the portfolio company upon resale or other disposition of the investment, such as to avoid or address a significant operating loss or in connection with a loss of senior management at the portfolio company.

(2) Duration Limited. A financial holding company may routinely manage or operate a portfolio company only for the period of time as may be necessary to address the cause of the financial holding company's involvement, to obtain suitable alternative management arrangements, to dispose of the investment, or to otherwise obtain a reasonable return upon the resale or disposition of the investment.

(3) Notice required for extended involvement. A financial holding company may not routinely manage or operate a portfolio company for a period greater than nine months without prior written notice to the Board.

(4) Documentation required. A financial holding company must maintain and make available to the Board upon request a written record describing its involvement in routinely managing or operating a portfolio company.

(f) May a depository institution or its subsidiary routinely manage or operate a portfolio company?--

(1) In general. A depository institution and a subsidiary of a depository institution may not routinely manage or operate a portfolio company in which an affiliated company owns or controls an interest under this subpart.

(2) Definition applying provisions governing routine management or operation. For purposes of this section other than paragraph (e) and for purposes of section 225.173(d), a financial holding company includes a depository institution controlled by the financial holding company and a subsidiary of such a depository institution.

(3) Exception for certain subsidiaries of depository institutions. For purposes of paragraph (e) of this section, a financial holding company includes a financial subsidiary held in accordance with section 5136A of the Revised Statutes or section 46 of the Federal Deposit Insurance Act, and a subsidiary that is a small business investment company and that is held in accordance with the Small Business Investment Act, and such a subsidiary may, in accordance with the limitations set forth in this section, routinely manage or operate a portfolio company in which an affiliated company owns or controls an interest under this subpart.

§ 225.172 - What are the holding periods permitted for merchant banking investments?

(a) Must investments be made for resale? A financial holding company may own or control shares, assets and ownership interests pursuant to this subpart only for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the

financial viability of the financial holding company's merchant banking investment activities.

(b) What period of time is generally permitted for holding merchant banking investments?--(1) In general. Except as provided in this section or section 225.173, a financial holding company may not, directly or indirectly, own, control or hold any share, asset or ownership interest pursuant to this subpart for a period that exceeds 10 years.

(2) Ownership interests acquired from or transferred to companies held under this subpart. For purposes of paragraph (b)(1) of this section, shares, assets or ownership interests–

(i) Acquired by a financial holding company from a company in which the financial holding company held an interest under this subpart will be considered to have been acquired by the financial holding company on the date that the share, asset or ownership interest was acquired by the company; and

(ii) Acquired by a company from a financial holding company will be considered to have been acquired by the company on the date that the share, asset or ownership interest was acquired by the financial holding company if–

(A) The financial holding company held the share, asset, or ownership interest under this subpart; and

(B) The financial holding company holds an interest in the acquiring company under this subpart.

(3) Interests previously held by a financial holding company under limited authority. For purposes of paragraph (b)(1) of this section, any shares, assets, or ownership interests previously owned or controlled, directly or indirectly, by a financial holding company under any other provision of the Federal banking laws that imposes a limited holding period will if acquired under this subpart be considered to have been acquired by the financial holding company under this subpart on the date the financial holding company first acquired ownership or control of the shares, assets or ownership interests under such other provision of law. For purposes of this paragraph (b)(3), a financial holding company includes a depository institution controlled by the financial holding company and any subsidiary of such a depository institution.

(4) Approval required to hold interests held in excess of time limit. A financial holding company may seek Board approval to own, control or hold shares, assets or ownership interests of a company under this subpart for a period that exceeds the period specified in paragraph (b)(1) of this section. A request for approval must:

(i) Be submitted to the Board at least 90 days prior to the expiration of the applicable time period;

(ii) Provide the reasons for the request, including information that addresses the factors in paragraph (b)(5) of this section; and

(iii) Explain the financial holding company's plan for divesting the shares, assets or ownership interests.

(5) Factors governing Board determinations. In reviewing any proposal under paragraph (b)(4) of this section, the Board may consider all the facts and circumstances related to the investment, including:

(i) The cost to the financial holding company of disposing of the investment within the applicable period;

(ii) The total exposure of the financial holding company to the company and the risks that disposing of the investment may pose to the financial holding company;

(iii) Market conditions;

(iv) The nature of the portfolio company's business;

(v) The extent and history of involvement by the financial holding company in the management and operations of the company; and

(vi) The average holding period of the financial holding company's merchant banking investments.

(6) Restrictions applicable to investments held beyond time period. A financial holding company that directly or indirectly owns, controls or holds any share, asset or ownership interest of a company under this subpart for a total period that exceeds the period specified in paragraph (b)(1) of this section must–

(i) For purposes of determining the financial holding company's regulatory capital, apply to the financial holding company's adjusted carrying value of such shares, assets, or ownership interests a capital charge determined by the Board that must be:

(A) Higher than the maximum marginal Tier 1 capital charge applicable under the Board's capital adequacy rules or guidelines (see 12 CFR 225 Appendix A) to merchant banking investments held by that financial holding company; and

(B) In no event less than 25 percent of the adjusted carrying value of the investment; and

(ii) Abide by any other restrictions that the Board may impose in connection with granting approval under paragraph (b)(4) of this section.

§ 225.173 - How are investments in private equity funds treated under this subpart?

(a) What is a private equity fund? For purposes of this subpart, a "private equity fund" is any company that:

(1) Is formed for the purpose of and is engaged exclusively in the business of investing in shares, assets, and ownership interests of financial and nonfinancial companies for resale or other disposition;

(2) Is not an operating company;

(3) No more than 25 percent of the total equity of which is held, owned or controlled, directly or indirectly, by the financial holding company and its directors, officers, employees and principal shareholders;

(4) Has a maximum term of not more than 15 years; and

(5) Is not formed or operated for the purpose of making investments inconsistent with the authority granted under section 4(k)(4)(H) of the Bank Holding Company Act or evading the limitations governing merchant banking investments contained in this subpart.

(b) What form may a private equity fund take? A private equity fund may be a corporation, partnership, limited liability company or other type of company that issues ownership interests in any form.

(c) What is the holding period permitted for interests in private equity funds?

(1) In general. A financial holding company may own, control or hold any interest in a private equity fund under this subpart and any interest in a portfolio company that is owned or controlled by a private equity fund in which the financial holding company owns or controls any interest under this subpart for the duration of the fund, up to a maximum of 15 years.

(2) Request to hold interest for longer period. A financial holding company may seek Board approval to own, control or hold an interest in or held through a private equity fund for a period longer than the duration of the fund in accordance with § 225.172(b) of this subpart.

(3) Application of rules. The rules described in § 225.172(b)(2) and (3) governing holding periods of interests acquired, transferred or previously held by a financial holding company apply to interests in, held through, or acquired from a private equity fund.

(d) How do the restrictions on routine management and operation apply to private equity funds and investments held through a private equity fund?--(1) Portfolio companies held through a private equity fund. A financial holding company may not routinely manage or operate a portfolio company that is owned or controlled by a private equity fund in which

the financial holding company owns or controls any interest under this subpart, except as permitted under § 225.171(e).

(2) Private equity funds controlled by a financial holding company. A private equity fund that is controlled by a financial holding company may not routinely manage or operate a portfolio company, except as permitted under § 225.171(e).

(3) Private equity funds that are not controlled by a financial holding company. A private equity fund may routinely manage or operate a portfolio company so long as no financial holding company controls the private equity fund or as permitted under § 225.171(e).

(4) When does a financial holding company control a private equity fund? A financial holding company controls a private equity fund for purposes of this subpart if the financial holding company, including any director, officer, employee or principal shareholder of the financial holding company:

(i) Serves as a general partner, managing member, or trustee of the private equity fund (or serves in a similar role with respect to the private equity fund);

(ii) Owns or controls 25 percent or more of any class of voting shares or similar interests in the private equity fund;

(iii) In any manner selects, controls or constitutes a majority of the directors, trustees or management of the private equity fund; or

(iv) Owns or controls more than 5 percent of any class of voting shares or similar interests in the private equity fund and is the investment adviser to the fund.

§ 225.174 - What aggregate thresholds apply to merchant banking investments?

(a) In general. A financial holding company may not, without Board approval, directly or indirectly acquire any additional shares, assets or ownership interests under this subpart or make any additional capital contribution to any company the shares, assets or ownership interests of which are held by the financial holding company under this subpart if the aggregate carrying value of all merchant banking investments held by the financial holding company under this subpart exceeds:

(1) 30 percent of the Tier 1 capital of the financial holding company; or

(2) after excluding interests in private equity funds, 20 percent of the Tier 1 capital of the financial holding company.

(b) How do these thresholds apply to a private equity fund? Paragraph (a) of this section applies to the interest acquired or controlled by the financial holding company under this subpart in a private equity fund. Paragraph (a) of this section does not apply to any interest in a company held by a private equity fund or to any interest held by a person that is not affiliated with the financial holding company.

(c) How long do these thresholds remain in effect? This section 225.174 shall cease to be effective on the date that a final rule issued by the Board that specifically addresses the appropriate regulatory capital treatment of merchant banking investments becomes effective.

§ 225.175 - What risk management, record keeping and reporting policies are required to make merchant banking investments?

(a) What internal controls and records are necessary?--(1) General. A financial holding company, including a private equity fund controlled by a financial holding company, that makes investments under this subpart must establish and maintain policies, procedures, records and systems reasonably designed to conduct, monitor and manage such investment activities and the risks associated with such investment activities in a safe and sound manner, including policies, procedures, records and systems reasonably designed to:

(i) Monitor and assess the carrying value, market value and performance of each investment and the aggregate portfolio;

(ii) Identify and manage the market, credit, concentration and other risks associated with such investments;

(iii) Identify, monitor and assess the terms, amounts and risks arising from transactions and relationships (including contingent fees or contingent interests) with each company in which the financial holding company holds an interest under this subpart;

(iv) Ensure the maintenance of corporate separateness between the financial holding company and each company in which the financial holding company holds an interest under this subpart and protect the financial holding company and its depository institution subsidiaries from legal liability for the operations conducted and financial obligations of each such company; and

(v) Ensure compliance with this part and any other provisions of law governing transactions and relationships with companies in which the financial holding company holds an interest under this subpart (e.g., fiduciary principles or sections 23A and 23B of the Federal Reserve Act, if applicable).

(2) Availability of records. A financial holding company must make the policies, procedures and records required by paragraph (a)(1) of this section available to the Board or the appropriate Reserve Bank upon request.

(b) What periodic reports must be filed? A financial holding company must provide reports to the appropriate Reserve Bank in such format and at such times as the Board may prescribe.

(c) Is notice required for the acquisition of companies?--(1) Fulfillment of statutory notice requirement. Except as required in paragraph (c)(2) of this section, no post-acquisition notice under section 4(k)(6) of the Bank Holding Company Act is required by a financial holding company in connection with an investment made under this subpart if the financial holding company has previously filed a notice under section 225.87 indicating that it had commenced merchant banking investment activities under this subpart.

(2) Notice of large individual investments. A financial holding company must provide written notice to the Board on the appropriate form within 30 days after acquiring more than 5 percent of the voting shares, assets or ownership interests of any company under this subpart, including an interest in a private equity fund, at a total cost to the financial holding

company that exceeds the lesser of 5 percent of the Tier 1 capital of the financial holding company or $200 million.

§ 225.176 - How do the statutory cross marketing and sections 23A and B limitations apply to merchant banking investments?

(a) Are cross marketing activities prohibited?--(1) In general. A depository institution, including a subsidiary of a depository institution, controlled by a financial holding company may not:

(i) Offer or market, directly or through any arrangement, any product or service of any company if more than 5 percent of the company's voting shares, assets or ownership interests are owned or controlled by the financial holding company pursuant to this subpart; or

(ii) Allow any product or service of the depository institution, including any product or service of a subsidiary of the depository institution, to be offered or marketed, directly or through any arrangement, by or through any company described in paragraph (a)(1)(i) of this section.

(2) How are certain subsidiaries treated? For purposes of paragraph (a)(1) of this section, a subsidiary of a depository institution does not include a financial subsidiary held in accordance with section 5136A of the Revised Statutes (12 U.S.C. 24a) or section 46 of the Federal Deposit Insurance Act. (12 U.S.C. 1831w), any company held by a company owned in accordance with section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq.; 12 U.S.C. 611 et seq.), or any company held by a small business investment company

owned in accordance with the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.).

(3) How do the cross marketing restrictions apply to private equity funds? The restriction contained in paragraph (a)(1) of this section does not apply to:

(i) Portfolio companies held by a private equity fund that the financial holding company does not control; or

(ii) The sale, offer or marketing of any interest in a private equity fund, whether or not controlled by the financial holding company.

(b) When are companies held under section 4(k)(4)(H) affiliates under sections 23A and B?--(1) Rebuttable presumption of control. The following rebuttable presumption of control shall apply for purposes of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1): if a financial holding company directly or indirectly owns or controls more than 15 percent of the total equity of a company pursuant to this subpart, the company shall be presumed to be an affiliate of any member bank that is affiliated with the financial holding company.

(2) Request to rebut presumption. A financial holding company may rebut this presumption by providing information acceptable to the Board demonstrating that the financial holding company does not control the company.

(3) Presumptions that control does not exist. Absent evidence to the contrary, the presumption in paragraph (b)(1) of this section will be considered to have been rebutted

without Board approval under paragraph (2) if any one of the following requirements are met:

(i) No officer, director or employee of the financial holding company serves as a director, trustee, or general partner (or individual exercising similar functions) of the company;

(ii) A person that is not affiliated or associated with the financial holding company owns or controls a greater percentage of the equity capital of the portfolio company than the amount owned or controlled by the financial holding company, and no more than one officer or employee of the holding company serves as a director or trustee (or individual exercising similar functions) of the company; or

(iii) A person that is not affiliated or associated with the financial holding company owns or controls more than 50 percent of the voting shares of the portfolio company, and officers and employees of the holding company do not constitute a majority of the directors or trustees (or individuals exercising similar functions) of the company.

(4) Convertible instruments. For purposes of paragraph (b)(1) of this section, equity capital includes options, warrants and any other instrument convertible into equity capital.

(5) Application of presumption to private equity funds. A financial holding company will not be presumed to own or control the equity capital of a company for purposes of paragraph (b)(1) of this section solely by virtue of an investment made by the financial holding company in a private equity fund that owns or controls the equity capital of the

company unless the financial holding company controls the private equity fund as described in § 225.173(d)(4).

(6) Application of sections 23A and B to U.S. branches and agencies of foreign banks. Sections 23A and 23B of the Federal Reserve Act shall apply to all covered transactions between each U.S. branch and agency of a foreign bank that acquires or controls, or that is affiliated with a company that acquires or controls, merchant banking investments and–

(A) Any portfolio company that the foreign bank or affiliated company controls or is presumed to control under paragraph (b)(1) of this section; and

(B) Any company that the foreign bank or affiliated company controls or is presumed to control under paragraph (b)(1) of this section if the company is engaged in acquiring or controlling merchant banking investments and the proceeds of the covered transaction are used for the purpose of funding the company's merchant banking investment activities.

§ 225.177 - Definitions.

(a) What do references to a financial holding company include?--(1) Except as otherwise expressly provided, the term "financial holding company" as used in this subpart means the financial holding company and all of its subsidiaries, including a private equity fund or other fund controlled by the financial holding company.

(2) Except as otherwise expressly provided, the term "financial holding company" does not include a depository institution or subsidiary of a depository institution or any portfolio company controlled directly or indirectly by the financial holding company.

(b) What do references to a depository institution include? For purposes of this subpart, the term "depository institution" includes a U.S. branch or agency of a foreign bank.

(c) What is a portfolio company? A portfolio company is any company or entity:

(1) That is engaged in any activity not authorized for the financial holding company under section 4 of the Bank Holding Company Act; and

(2) Any shares, assets or ownership interests of which are held, owned or controlled directly or indirectly by the financial holding company pursuant to this subpart, including through a private equity fund that the financial holding company controls.

(d) Who are the executive officers of a company?

(1) An executive officer of a company is any person who participates or has the authority to participate (other than in the capacity as a director) in major policymaking functions of the company, whether or not the officer has an official title, the title designates the officer as an assistant, or the officer serves without salary or other compensation.

(2) The term "executive officer" does not include–

(i) Any person, including a person with an official title, who may exercise a certain measure of discretion in the performance of his duties, including the discretion to make decisions in the ordinary course of the company's business, but who does not participate in the determination of major policies of the company and whose decisions are limited by policy standards fixed by senior management of the company; or

(ii) Any person who is excluded from participating (other than in the capacity of a director) in major policymaking functions of the company by resolution of the board of directors or by the bylaws of the company and who does not in fact participate in such policymaking functions.