

FEDERAL RESERVE SYSTEM

12 CFR Part 241

Regulation OO; Docket No. R-1430

RIN 7100 –AD 81

Supervised Securities Holding Companies Registration

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

ACTION: Proposed rule with request for public comments.

SUMMARY: The Board is issuing a proposed rule to implement section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), which permits nonbank companies that own at least one registered securities broker or dealer, and that are required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision, to register with the Board and subject themselves to supervision by the Board. The proposed rule outlines the requirements that a securities holding company must satisfy to make an effective election, including filing the appropriate form with the responsible Reserve Bank, providing all additional required information, and satisfying the statutory waiting period of 45 days or such shorter period the Board determines appropriate.

DATES: Comments must be received on or before October 11, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R-1430 and RIN No. 7100-AD 81, 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.
- **FAX:** 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, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at 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 in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Amanda K. Allexon, Senior Counsel (202) 452-3818, or Bao Nguyen, Attorney, (202) 736-5599, Legal Division; or Michael J. Sexton, Assistant Director, (202) 452-3009, Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Users of Telecommunication Device for the Deaf (TTD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background.

Section 618 of the Dodd-Frank Act permits a company that owns at least one registered securities broker or dealer (a "nonbank securities company"), and that is required by a foreign regulator or provision of foreign law to be subject to comprehensive

consolidated supervision, to register with the Board as a securities holding company and become subject to supervision and regulation by the Board.¹ A securities holding company that registers with the Board under section 618 is subject to the full examination, supervision, and enforcement regime applicable to a registered bank holding company, including capital requirements set by the Board (though the statute allows the Board to modify its capital rules to account for differences in activities and structure of securities holding companies and bank holding companies). The primary difference in regulatory frameworks between securities holding companies and bank holding companies is that the restrictions on nonbanking activities that apply to bank holding companies do not apply to securities holding companies.

Under section 618 of the Act, a securities holding company that elects to be subject to supervision by the Board must submit a registration form that includes all such information and documents the Board, by regulation, deems necessary or appropriate. The statute also specifies that registration as a supervised securities holding company becomes effective 45 days after the date the Board receives all required information, or within such shorter period as the Board, by rule or order, may determine.

Section 618 makes a registered securities holding company subject to all of the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (“BHC Act”) in the same manner as a bank holding company, other than the restrictions on nonbanking activities contained in section 4 of the BHC Act.² Consistent with the Dodd-Frank Act, the Board anticipates applying the same supervisory program, including examination procedures, reporting requirements, supervisory guidance, and capital

¹ 12 U.S.C. § 1850a.

² 12 U.S.C. 1850a(d)(1) and (e)(2).

standards, to supervised securities holding companies that the Board currently applies to bank holding companies. However, the Board may, based on experience gained during the supervision of supervised securities holding companies, modify these requirements as appropriate and consistent with section 618.

II. Overview of Proposed Rule.

This proposed rulemaking would permit securities holding companies to elect to become supervised securities holding companies by registering with the Board. The proposed rule outlines the requirements that a securities holding company must satisfy to make an effective registration, including filing the appropriate form with the responsible Reserve Bank, providing all additional information requested by the Board, and satisfying the statutory waiting period of 45 days or such shorter period the Board determines appropriate. The Board is seeking comments on all aspects of this proposed rulemaking.

Section 241.1 of the proposed rule outlines the authority under which the Board is issuing the proposed rule. Section 241.2 of the proposed rule incorporates the statutory language in section 618 defining a “securities holding company” to mean any company that directly or indirectly owns or controls, is controlled by, or is under common control with, one or more brokers or dealers registered with the Securities and Exchange Commission. The term does not include, among other things, a company that is a nonbank financial company supervised by the Board, a banking holding company, a savings and loan holding company, an insured bank, a savings association, or a foreign banking organization with U.S. banking operations. Under the proposal, terms such as “affiliate,” “bank,” “bank holding company,” “control,” and “subsidiary” are defined to have the same meaning as in section 225.2 of the Board’s Regulation Y.

Section 241.3 of the proposed rule requires a securities holding company that elects to register to become a supervised securities holding company to file the proper form with the responsible Reserve Bank. As discussed further in section **IV** below, the Board is proposing to create a new form for this purpose. The proposed form, which is similar to the Board's current form Y-3F, used by a company registering to become a bank holding company, would include a number of questions relating to the organizational structure of the securities holding company, its capital structure, and its financial condition. Specifically, the proposed form would require a securities holding company electing to be supervised to submit:

1. An organization chart for the securities holding company showing all subsidiaries.
2. The name, asset size, general activities, place of incorporation, and ownership share held by the securities holding company for each of the securities holding company's direct and indirect subsidiaries that comprise 1 percent or more of the securities holding company's worldwide consolidated assets.
3. A list of all persons (natural as well as legal) in the upstream chain of ownership of the securities holding company who, directly or indirectly, own 5 percent or more of the voting shares of the securities holding company. In addition, the Board would request information concerning any voting agreements or other mechanisms that exist among shareholders for the exercise of control over the securities holding company.
4. For the senior officers and directors with decision-making authority for the securities holding company, the biographical information requested in the Interagency Biographical and Financial Report FR 2081c (the Financial Report need not be provided).

5. Copies of the most recent quarterly and annual reports prepared for shareholders, if any, for the securities holding company and certain subsidiaries.
6. Income statements, balance sheets, and audited GAAP statements, as well as any other financial statements submitted to the securities holding company's current consolidated supervisor, if any, each on a parent-only and consolidated basis, showing separately each principal source of revenue and expense, through the end of the most recent fiscal quarter and for the past two (2) fiscal years.
7. A description of the methods used by the securities holding company to monitor and control its operations, including those of its domestic and foreign subsidiaries and offices (e.g., through internal reports and internal audits).
8. A description of the bank regulatory system that exists in the home country of any of the securities holding company's foreign bank subsidiaries. The description also should include a discussion of each of the following:
 - a. The scope and frequency of on-site examinations by the home country supervisor;
 - b. Off-site monitoring by the home country supervisor;
 - c. The role of external auditors;
 - d. Transactions with affiliates;
 - e. Other applicable prudential requirements;
 - f. Remedial authority of the home country supervisor;
 - g. Prior approval requirements; and,
 - h. Any applicable regulatory capital framework.
9. A description of any other regulatory capital framework to which the securities holding company is subject.

The proposed rule further provides that the Board may at any time request additional information that it believes is necessary to complete the registration.

Under the proposed rule, the registration is considered filed when all information required by the Board is received. Section 241.3 of the proposed rule also states that a registration filed by a securities holding company becomes effective and supervision by the Board begins on the 45th calendar day after the date that a complete filing is received. Under the proposed rule, the Board also reserves the right to shorten the 45-day waiting period and begin consolidated supervision at such earlier date as the Board specifies to the securities holding company in writing.

The proposed rule provides that, upon an effective registration, a supervised securities holding company would be supervised and regulated as if it were a bank holding company, and that the nonbanking restrictions contained in section 4 of the BHC Act will not apply to a supervised securities holding company. This treatment will generally mean that supervised securities holding companies will, among other things, be required to submit the same reports and be subject to the same examination procedures, supervisory guidance, and capital standards that currently apply to bank holding companies. However, the Board anticipates that there will be a period of time before the Board becomes fully acquainted with supervised securities holding companies (and their operations) because they are a new class of entities the Dodd-Frank Act requires the Board to supervise. As a result, the proposed rule provides the Board with flexibility to supervise and regulated supervised securities holding companies in a manner that is consistent with safety and soundness and that addresses the risks they pose to financial stability.

III. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language

in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make the proposed rule easier to understand. For example:

- Is the material organized in a clear, understandable, and complete way? If not, how can the rule be presented more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is the section format adequate? If not, which of the sections should be changed and how?
- What other changes can the Board incorporate to make the regulation easier to understand?

IV. Administrative Law Matters

A. Paperwork Reduction Act Analysis

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“PRA”), the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for the existing information collections are provided below. The OMB control number will be assigned for the new information collection related to registrations described below. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Title of Existing Information Collections:

- The Annual Report of Bank Holding Companies (FR Y-6),
- The Report of Foreign Banking Organizations (FR Y-7),
- The Consolidated Financial Statements for Bank Holding Companies (FR Y-9C),
- The Parent Company Only Financial Statements for Large Bank Holding Companies (FR Y-9LP),
- The Parent Company Only Financial Statements for Small Bank Holding Companies (FR Y-9SP),
- The Financial Statements for Employee Stock Ownership Plan Bank Holding Companies (FR Y-9ES),
- The Supplement to the Consolidated Financial Statements for Bank Holding Companies (FR Y-9CS),
- The Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y-11 and FR Y-11S),
- The Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314 and FR 2314S),
- The Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates (FR Y-8),
- The Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies (FR Y-12) and the Annual Report of Merchant Banking Investments Held for an Extended Period (FR Y-12A), and
- The Capital and Asset Report of Foreign Banking Organizations (FR Y-7Q), and the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y-7N and FR Y-7NS).

Frequency of Response: Annually, semi-annually, quarterly, event-generated.

Affected Public: Nonbank companies.

Abstract: The information collection reporting requirements are found in sections 241.3(a)(1) and 241.3(b)(3)(i) of the proposed rule. These requirements would implement regulations related to section 618 of the Dodd-Frank Act, which, as discussed above, permit securities holding companies to register with, and subject themselves to supervision by, the Board. As previously noted, a supervised securities holding company is subject to all of the provisions of the BHC Act in the same manner as a bank holding company, other than the restrictions on nonbanking activities contained in section 4 of the BHC Act.

Section 241.3(a)(1) would require securities holding companies that elect to register to become supervised securities holding companies to file a registration form with the responsible Reserve Bank. The registration form would ask information on: the organization chart (including all subsidiaries), shareholders, senior officers and directors, methods used to monitor and control its operations, and foreign bank subsidiaries and the bank regulatory system in which these foreign bank subsidiaries operate. Section 241.3(b)(3)(i) would require supervised securities holding companies to be subject to supervision and regulation by the Board as if such companies were bank holding companies. Accordingly, the Federal Reserve would require supervised securities holding companies to file the same reports as bank holding companies as follows: FR Y-6 and FR Y-7 (OMB No. 7100-0297); FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9ES, and FR Y-9CS (OMB No. 7100-0128); FR Y-11 and FR Y-11S (OMB No. 7100-0244); FR 2314 and FR 2314S (OMB No. 7100-0073); FR Y-8 (OMB No. 7100-0126); FR Y-12 and FR Y-12A (OMB No. 7100-0300); FR Y-7Q, FR Y-7N and FR Y-7NS (OMB No. 7100-0125).

Estimated Burden

The estimated burden per filing for the registration form in section 241.3(a)(1) is eight hours (one business day). The Board estimates that approximately five securities holding companies would file a request to become a supervised securities holding company. Therefore, the total annual burden for the registration form is estimated to be 40 hours. Effective upon registration, and except as otherwise provided by order of the Board, a supervised securities holding company shall file the existing bank holding company reporting forms listed above on the calendar quarter-end under section 241.3(b)(3)(i). The hourly burden estimates associated with each of these reporting forms is not expected to change materially as the information to be collected is substantively similar to that which is currently being collected from bank holding companies. There is currently only one securities holding company as of June 30, 2011, which would be added to the respondent panel for each report, as appropriate.

For additional information on the current burden associated with any of the existing information collections, please see OMB's public website at: <http://www.reginfo.gov/public/do/PRAMain> . For copies of the current reporting forms, please see the Federal Reserve's public website at:

<http://www.federalreserve.gov/reportforms/default.cfm>.

Comments are invited on:

- (a) Whether the collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- (b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (SHC Registration), Washington, DC 20503. You may also submit comments electronically, identified by Docket number, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments on the <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.

B. Regulatory Flexibility Act Analysis

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 will 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 comments received during the public comment period have been considered.

In accordance with section 618 of the Dodd-Frank Act, the Board is proposing Regulation OO (12 CFR 241 et seq.) to establish a process for a securities holding company to elect to be supervised by the Board. The proposed rule would establish the requirements and procedures for registering with the Board in order to become a supervised securities holding company. As noted above, a supervised securities holding company would be supervised and regulated as if it were a bank holding company, and would be required to submit the same reports that currently apply to bank holding companies. The reasons and justification for the proposed rule are described in the Supplementary Information. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules.

Under regulations issued by the Small Business Administration (“SBA”), a “small entity” includes those firms within the “Finance and Insurance” sector with asset sizes that vary from \$7 million or less in assets to \$175 million or less in assets.³ 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

³ 13 CFR 121.201.

nature. Consequently, securities holding companies with assets sizes of \$175 million or less are small entities for purposes of the RFA.

As discussed in the Supplementary Information, the proposed rule would apply to any securities holding company that elects to be supervised by the Board regardless of such a company's asset size. However, at this time, only one company, which has assets in excess of \$175 million, has expressed interest in electing to become a supervised securities holding company. Moreover, only one company ever elected to be supervised under the investment bank holding company framework administered by the Securities and Exchange Commission, which like the framework in the proposed rule provided an elective mechanism to enable nonbank securities company to satisfy requirements by a foreign regulator or provision of foreign law that such company be subject to comprehensive consolidated supervision. Taking these facts into consideration but also allowing for additional flexibility, the Board estimates that approximately five securities holding companies may possibly register to become a Board supervised securities holding company.

In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised by the Board. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 618 of the Dodd-Frank Act.

List of Subjects in 12 CFR Part 241

Administrative practice and procedure, Holding companies, Securities, Federal Reserve System, Brokers and dealers, Foreign law, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Chapter II as follows:

1. Add new part 241 to read as follows:

Part 241—SECURITIES HOLDING COMPANIES (REGULATION OO)

Sec.

241.1 Authority and Purpose

241.2 Definitions.

241.3 Registration as a supervised securities holding company.

Authority: 12 U.S.C. 1850a.

§ 241.1 Authority and Purpose.

(a) *Authority.* This part is issued by the Board pursuant to section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1850a).

(b) *Purpose.* This part establishes the procedure by which a securities holding company may elect to register to be supervised by the Board.

§ 241.2 Definitions.

Except as defined below, terms used in this part have the same meaning given them in 12 CFR 225.2.

(a) *Securities holding company.* (1) A securities holding company means any company that directly or indirectly owns or controls, is controlled by, or is under common control with, one or more brokers or dealers registered with the Securities and Exchange Commission; and

(2) does not include a company that is—

- (i) a nonbank financial company supervised by the Board pursuant to Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.);
- (ii) an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or a savings association;
- (iii) an affiliate of an insured bank (other than an institution described in subparagraphs (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) or an affiliate of a savings association;
- (iv) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a));

- (v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or
- (vi) subject to comprehensive consolidated supervision by a foreign regulator.

(b) *Supervised securities holding company* means a securities holding company that is supervised by the Board pursuant to this part.

§ 241.3 Registration as a supervised securities holding company.

(a) Registration.

- (1) *Filing Requirement.* A securities holding company may elect to register to become a supervised securities holding company by filing the appropriate form with the responsible Reserve Bank. The responsible Reserve Bank is determined by the Director of Banking Supervision and Regulation at the Board, or the Director's delegee.
- (2) *Request for additional information.* The Board may, at any time, request additional information that it believes is necessary to complete the registration.
- (3) *Complete filing.* A registration by a securities holding company is considered to be filed on the date that all information required on the appropriate form is received.

(b) *Effective date of registration.*

- (1) *In general.* A registration filed by a securities holding company under paragraph (a) of this section is effective on the 45th calendar day after the date that a complete filing is received by the responsible Reserve Bank.
- (2) *Earlier notification that a registration is effective.* The Board may notify a securities holding company that its registration to become a supervised securities holding company is effective prior to the 45th calendar day after the date that a complete filing is received by the responsible Reserve Bank. Such a notification must be in writing.
- (3) (i) Upon an effective registration and except as otherwise provided by order of the Board, a supervised securities holding company shall be treated, and shall be subject to supervision and regulation by the Board, as if it were a bank holding company, or as otherwise appropriate to protect the safety and soundness of the supervised securities holding company and address the risks posed by such company to financial stability.
- (ii) The provisions of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) do not apply to a supervised securities holding company.

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By order of the Board of Governors of the Federal Reserve System, August 29, 2011.

Jennifer J. Johnson (signed)

Jennifer J. Johnson,
Secretary of the Board.