

including any service referred to in section 248a of this title; or

(ii) exercise discount or borrowing privileges pursuant to section 461(b)(7) of this title.

(2) Hedge fund; private equity fund

The terms “hedge fund” and “private equity fund” mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act [15 U.S.C. 80a-3(c)(1), (7)], or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

(3) Nonbank financial company supervised by the Board

The term “nonbank financial company supervised by the Board” means a nonbank financial company supervised by the Board of Governors, as defined in section 5311 of this title.

(4) Proprietary trading

The term “proprietary trading”, when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

(5) Sponsor

The term to “sponsor” a fund means—

(A) to serve as a general partner, managing member, or trustee of a fund;

(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(6) Trading account

The term “trading account” means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

(7) Illiquid fund

(A) In general

The term “illiquid fund” means a hedge fund or private equity fund that—

(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

(B) Hedge fund

For the purposes of this paragraph, the term “hedge fund” means any fund identified under subsection (h)(2), and does not include a private equity fund, as such term is used in section 80b-3(m) of title 15.

(May 9, 1956, ch. 240, §13, as added Pub. L. 111-203, title VI, §619, July 21, 2010, 124 Stat. 1620.)

REFERENCES IN TEXT

Section 8 of the International Banking Act, referred to in subsec. (b)(2)(B)(i)(II), probably means section 8 of Pub. L. 95-369, known as the International Banking Act of 1978, which enacted section 3106 of this title and amended section 1841 of this title.

The Farm Credit Act of 1971, referred to in subsec. (d)(1)(A), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Section 102 of the Small Business Investment Act of 1958, referred to in subsec. (d)(1)(E), probably should be section 103 of the Small Business Investment Act of 1958, which is classified to section 662 of Title 15, Commerce and Trade.

Section 8 of the International Banking Act of 1978, referred to in subsec. (h)(1), is section 8 of Pub. L. 95-369, which enacted section 3106 of this title and amended section 1841 of this title.

The Investment Company Act of 1940, referred to in subsec. (h)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of this title.

§ 1852. Concentration limits on large financial firms

(a) Definitions

In this section—

(1) the term “Council” means the Financial Stability Oversight Council;

(2) the term “financial company” means—

(A) an insured depository institution;

- (B) a bank holding company;
- (C) a savings and loan holding company;
- (D) a company that controls an insured depository institution;
- (E) a nonbank financial company supervised by the Board under title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5311 et seq.]; and
- (F) a foreign bank or company that is treated as a bank holding company for purposes of this chapter; and

(3) the term “liabilities” means—

(A) with respect to a United States financial company—

(i) the total risk-weighted assets of the financial company, as determined under the risk-based capital rules applicable to bank holding companies, as adjusted to reflect exposures that are deducted from regulatory capital; less

(ii) the total regulatory capital of the financial company under the risk-based capital rules applicable to bank holding companies;

(B) with respect to a foreign-based financial company—

(i) the total risk-weighted assets of the United States operations of the financial company, as determined under the applicable risk-based capital rules, as adjusted to reflect exposures that are deducted from regulatory capital; less

(ii) the total regulatory capital of the United States operations of the financial company, as determined under the applicable risk-based capital rules; and

(C) with respect to an insurance company or other nonbank financial company supervised by the Board, such assets of the company as the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies.

(b) Concentration limit

Subject to the recommendations by the Council under subsection (e), a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

(c) Exception to concentration limit

With the prior written consent of the Board, the concentration limit under subsection (b) shall not apply to an acquisition—

(1) of a bank in default or in danger of default;

(2) with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 1823(c) of this title; or

(3) that would result only in a de minimis increase in the liabilities of the financial company.

(d) Rulemaking and guidance

The Board shall issue regulations implementing this section in accordance with the recom-

mendations of the Council under subsection (e), including the definition of terms, as necessary. The Board may issue interpretations or guidance regarding the application of this section to an individual financial company or to financial companies in general.

(e) Council study and rulemaking

(1) Study and recommendations

Not later than 6 months after July 21, 2010, the Council shall—

(A) complete a study of the extent to which the concentration limit under this section would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of United States financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States; and

(B) make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement this section.

(2) Rulemaking

Not later than 9 months after the date of completion of the study under paragraph (1), and notwithstanding subsections (b) and (d), the Board shall issue final regulations implementing this section, which shall reflect any recommendations by the Council under paragraph (1)(B).

(May 9, 1956, ch. 240, §14, as added Pub. L. 111-203, title VI, §622, July 21, 2010, 124 Stat. 1632.)

REFERENCES IN TEXT

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (a)(2)(E), is Pub. L. 111-203, July 21, 2010, 124 Stat. 1376. Title I of the Act, known as the Financial Stability Act of 2010, is classified principally to subchapter I (§5311 et seq.) of chapter 53 of this title. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

This chapter, referred to in subsec. (a)(2)(F), was in the original “this Act”, meaning act May 9, 1956, ch. 240, 70 Stat. 133, known as the Bank Holding Company Act of 1956, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of this title.

CHAPTER 18—BANK SERVICE COMPANIES

Sec.	
1861.	Short title and definitions.
1862.	Amount of investment in bank service company.
1863.	Permissible bank service company activities for depository institutions.
1864.	Permissible bank service company activities for other persons.
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