

throughout proposed Rules 17i-1 through 17i-8.

Pursuant to the definitions in the Act, the term "investment bank holding company" means any person, other than a natural person, that owns or controls one or more broker-dealers and the associated persons of the investment bank holding company.²⁰ The term "associated person of an investment bank holding company" means any person directly or indirectly controlling, controlled by, or under common control with the IBHC.²¹ Thus, an IBHC includes the holding company and all other entities within the holding company structure that meet the "control" test. A "supervised investment bank holding company" is any IBHC that is supervised by the Commission pursuant to Section 17(i) of the Exchange Act.²²

Sections 17(i)(5)(C), (D), and (E) of the Exchange Act state that, for purposes of Section 17(i) of the Exchange Act, the terms "affiliate,"²³ "bank,"²⁴ "bank holding company,"²⁵ "company,"²⁶ "control,"²⁷ and "savings association"²⁸ have the same meaning as given in Section 2 of the Bank Holding Company Act of 1956²⁹ (the "Bank Holding Company Act"); the term "insured bank" has the same meaning as given in Section 3 of the Federal Deposit Insurance Act;³⁰ and the term "foreign bank" has the same meaning as given in Section 1(b)(7) of the International Banking Act.³¹

Proposed Rule 17i-1 also includes definitions of the terms "affiliate group" and "material affiliate." The term "affiliate group" is defined to include the SIBHC and every affiliate of the SIBHC because we believe that we would need to obtain information related to all affiliates to provide effective supervision of an SIBHC. We define the term "material affiliate" to include any member of the affiliate group that is material to the SIBHC

because, based on the Commission's experience in reviewing holding company documentation, receiving information specific to affiliates material to a holding company provides us with a better understanding of the holding company, including how risk is managed on a consolidated level.

We request comment on whether the proposed definitions of affiliate group and material affiliate are appropriate, whether it would be helpful to reproduce the statutory definitions within the rules, and whether any additional terms need to be defined in these rules.

B. Proposed Rule 17i-2: Notice of Intention To Be Supervised by the Commission as an SIBHC

Section 17(i)(1)(B) of the Exchange Act states that in order to elect to become an SIBHC, an IBHC must file with the Commission a written notice of intention to become supervised by the Commission in such form and containing such information and documents concerning the IBHC as the Commission, by rule, may prescribe as necessary and appropriate in furtherance of the purposes of Section 17 of the Act (a "Notice of Intention").³² Proposed Rule 17i-2 would provide the method by which an IBHC could elect to become an SIBHC. In addition, consistent with Section 17(i)(1)(B) of the Exchange Act, proposed Rule 17i-2 indicates that the IBHC will automatically become an SIBHC 45 days after the Commission receives its completed Notice of Intention unless the Commission issues an order indicating either that it will begin its supervision sooner or that it does not believe it to be necessary or appropriate in furtherance of Section 17 of the Act for the IBHC to be so supervised. Finally, proposed Rule 17i-2 sets forth the criteria the Commission would use to make this determination.³³

If an IBHC becomes an SIBHC, supervision of its affiliated broker-dealer and related associated persons generally would not be affected, except that a broker-dealer affiliated with an SIBHC would be exempted from the requirements of Rules 17h-1T and 17h-2T.

1. Election Criteria

Section 17(i)(1)(A) of the Exchange Act sets forth certain limitations on whether an IBHC is eligible to become an SIBHC.³⁴ Specifically, an IBHC that

is not (i) an affiliate of an insured bank (with certain exceptions) or a savings association;³⁵ (ii) a foreign bank, foreign company, or a company that is described in section 8(a) of the International Banking Act of 1978;³⁶ or (iii) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act³⁷ would be eligible to file a Notice of Intention. Paragraph (a) of proposed Rule 17i-2 would incorporate these statutory exclusions.

2. Notice of Intention To Become an SIBHC

Proposed Rule 17i-2(b) would require that an IBHC that elects to become an SIBHC file a written Notice of Intention with the Commission that includes (i) a request to become an SIBHC; (ii) a statement certifying that it is not affiliated with an entity listed in Section 17(i)(1)(A) of the Exchange Act;³⁸ (iii) documentation demonstrating that it owns or controls at least one broker-dealer that maintains a substantial presence in the securities business as evidenced either by its holding tentative net capital of \$100 million or more or otherwise; and (iv) other supplemental documents described below.

To assist the Commission in evaluating the IBHC's activities, financial condition, risk management control systems, and the relationships among its associated persons in order to determine whether Commission supervision of the IBHC is necessary and appropriate in furtherance of the purposes of Section 17 of the Exchange Act, an IBHC also would be required to file the following supplemental documents with its Notice of Intention pursuant to proposed Rule 17i-2:

- A narrative describing the business and organization of the IBHC;
- An alphabetical list of the members of the affiliate group, a designation of those affiliates it considers to be "material affiliates" and the financial regulator(s), if any, with which the affiliate is registered;
- An organizational chart identifying the IBHC and its material affiliates;
- Consolidated and consolidating financial statements;
- Certain sample calculations of allowable capital and allowances for market, credit, and operational risk or

³⁵ Exchange Act Section 17(i)(1)(A)(i) [15 U.S.C. 78q(i)(1)(A)(i)].

³⁶ Exchange Act Section 17(i)(1)(A)(ii) [15 U.S.C. 78q(i)(1)(A)(ii)].

³⁷ See Exchange Act Section 17(i)(1)(A)(iii) (Federal Reserve Act § 25A [12 U.S.C. 611]) [15 U.S.C. 78q(i)(1)(A)(iii)].

³⁸ 15 U.S.C. 78q(i)(1)(A).

²⁰ Exchange Act Section 17(i)(5)(A) [15 U.S.C. 78q(i)(5)(A)].

²¹ Exchange Act Section 17(i)(5)(F) [15 U.S.C. 78q(i)(5)(F)].

²² 15 U.S.C. 78q(i)(5)(B).

²³ Bank Holding Company Act Section 2(k) [12 U.S.C. 1841(k)].

²⁴ Bank Holding Company Act Section 2(c) [12 U.S.C. 1841(c)].

²⁵ Bank Holding Company Act Section 2(a) [12 U.S.C. 1841(a)].

²⁶ Bank Holding Company Act Section 2(b) [12 U.S.C. 1841(b)].

²⁷ Bank Holding Company Act Section 2(a)(2) *et seq.* [12 U.S.C. 1841(a)(2) *et seq.*].

²⁸ Bank Holding Company Act Section 2(j) [12 U.S.C. 1841(j)].

²⁹ 12 U.S.C. 1841.

³⁰ 12 U.S.C. 1813(h).

³¹ 12 U.S.C. 3101(7).

³² Exchange Act Section 17(i)(1)(B) [15 U.S.C. 78q(i)(1)(B)].

³³ *Id.*

³⁴ Exchange Act Section 17(i)(1)(A) [15 U.S.C. 78q(i)(1)(A)].