

## IC 28-1-18.2

### Chapter 18.2. Examination of Affiliates

#### IC 28-1-18.2-1

##### "Affiliate" defined; scope of term

Sec. 1. (a) As used in this chapter, "affiliate" means any of the following:

- (1) Any company that controls a bank and any other company that is controlled by the company that controls a bank.
- (2) A bank subsidiary of a bank.
- (3) Any company:
  - (A) that is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the bank or any company that controls the bank; or
  - (B) in which a majority of its directors or trustees constitute a majority of the persons holding any such office with a bank or any company that controls the bank;
- (4) Any:
  - (A) company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the bank or any subsidiary or affiliate of the bank; or
  - (B) investment company with respect to which a bank or any affiliate of a bank is an investment advisor (as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a)).
- (5) Any company that the department determines by regulation or order to have a relationship with the bank or any subsidiary or affiliate of the bank, such that covered transactions by the bank or its subsidiary with that company may be affected by the relationship to the detriment of the bank or its subsidiary.

(b) The term "affiliate" does not include the following:

- (1) Any company, other than a bank, that is a subsidiary of a bank, unless a determination is made under section 1(a)(5) of this chapter not to exclude such subsidiary company from the definition of affiliate.
- (2) Any company engaged solely in holding the premises of the bank.
- (3) Any company engaged solely in conducting a safe deposit business.
- (4) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest.
- (5) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable state or federal law or regulation, or in the absence of such law or regulation, for a period of two (2) years from the date of the exercise of such rights or the effective date of the

act, whichever date is later, subject, upon application, to authorization by the department for good cause shown of extensions in the aggregate shall not exceed three (3) years.  
*As added by P.L.33-1991, SEC.18. Amended by P.L.14-1992, SEC.94.*

#### **IC 28-1-18.2-1.1**

##### **"Company" defined**

Sec. 1.1. As used in this chapter, "company" means a corporation, limited liability company, partnership, business trust, association, or similar organization. Unless specifically excluded, the term includes a bank.

*As added by P.L.14-1992, SEC.95. Amended by P.L.8-1993, SEC.441.*

#### **IC 28-1-18.2-1.2**

##### **"Subsidiary" defined**

Sec. 1.2. As used in this chapter, "subsidiary" with respect to a specified company means a company that is controlled by the specified company.

*As added by P.L.14-1992, SEC.96.*

#### **IC 28-1-18.2-1.3**

##### **Control over another company; fiduciary ownership or control of shares**

Sec. 1.3. (a) A company or shareholder is considered to have control over another company if:

- (1) the company or shareholder, directly or indirectly, or acting through at least one (1) other person owns, controls, or has power to vote at least twenty-five percent (25%) of any class of voting securities of the other company;
- (2) the company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or
- (3) the department determines, after notice and opportunity for hearing, that the company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company.

(b) Notwithstanding any other provision of this chapter, a company is not considered to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in subsection (a)(3) or if the company owning or controlling the shares is a business trust.

*As added by P.L.14-1992, SEC.97.*

#### **IC 28-1-18.2-2**

##### **Statement of financial condition; requirements; extension of time; additional statements; penalty for failure to furnish statement**

Sec. 2. (a) Within thirty (30) days after receipt of a request from the department, a bank or trust company shall furnish to the

department a statement of financial condition of the affiliates identified in the request.

- (b) The statements furnished under subsection (a) must:
- (1) be dated at least six (6) months apart; and
  - (2) contain the information that in the judgment of the department:
    - (A) is necessary to disclose fully the relations between the affiliate and the bank or trust company; and
    - (B) will enable the department to inform itself as to the effect of the relations upon the affairs of the bank or trust company.

(c) The department may, for good cause shown, extend the time for furnishing the statements requested under subsection (a).

(d) The department may request additional statements of financial condition with respect to an affiliate when, in its judgment, additional statements are necessary to obtain a full and complete knowledge of the conditions of the bank or trust company with which it is affiliated. Additional statements of condition shall be transmitted to the department in the form prescribed by the department.

(e) If a bank or trust company fails to furnish a statement of condition of an affiliate that may be required under this article, that bank or trust company is subject to a penalty of one hundred dollars (\$100) for each day during which the failure continues. The department may recover a penalty imposed by this subsection in a court of competent jurisdiction.

*As added by P.L.33-1991, SEC.18.*

### **IC 28-1-18.2-3**

#### **Examination; report on failure to comply with department's recommendations or suggestions**

Sec. 3. (a) In making the examination of a bank or trust company, the department shall include an examination of the affairs of all the bank or trust company's affiliates necessary to disclose fully the relations between the bank or trust company and its affiliates, and the effect of those relations upon the affairs of the bank or trust company.

(b) The department may publish the report of its examination of a bank or trust company, or an affiliate, which has not, within one hundred and twenty (120) days after notification of the recommendations or suggestions of the department, based on the examination, complied with the recommendations or suggestions to the department's satisfaction. The department must give the bank or trust company or the affiliate ninety (90) days notice prior to publication of a report under this subsection.

*As added by P.L.33-1991, SEC.18.*

### **IC 28-1-18.2-4**

#### **Powers of department; assessment of expenses; penalty for refusal to permit examination**

Sec. 4. (a) In making the examination of an affiliate of a bank or

trust company, the department has the same powers with respect to the examination as are conferred upon it in the examination of the affairs of a bank or trust company by IC 28-11-3.

(b) The expenses incurred in making examinations of affiliates may be assessed by the department upon the affiliates examined, in proportion to the assets or resources held by the affiliates, upon the days of examination of the various affiliates, and in the manner and at the rate as fixed and prescribed by the department under IC 28-11-3-5.

(c) If an affiliate refuses to pay expenses assessed under subsection (b), or fails to do so within sixty (60) days after the date of the assessment, the expenses may be assessed against the affiliated bank or trust company, and, when so assessed, must be paid by that bank or trust company.

(d) If an affiliate of a bank or trust company refuses to permit the department to make an examination, the bank or trust company with which the affiliate is affiliated is subject to a penalty of not more than one hundred dollars (\$100) for each day that the refusal continues. The penalty may be assessed by the department and collected in the same manner as expenses of examination.

*As added by P.L.33-1991, SEC.18.*

#### **IC 28-1-18.2-5**

##### **Applicability of certain provisions of Federal Reserve Act and regulations; violations**

Sec. 5. (a) For purposes of this section, a bank or trust company that is not a member of the Federal Reserve System is subject to Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) and Federal Reserve Regulation W (12 CFR 223) to the same extent and in the same manner as though it were a member of the Federal Reserve System.

(b) A violation of Section 23A or 23B of the Federal Reserve Act (12 U.S.C. 371c or 371c-1) or Federal Reserve Regulation W (12 CFR 223) by a bank or trust company or a subsidiary of either constitutes a violation of this section.

*As added by P.L.33-1991, SEC.18. Amended by P.L.141-2005, SEC.8.*