

Foreign Banks as U.S. Financial Holding Companies (Chapter 11, Co-Author)

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This Chapter discusses the expanded powers that a foreign bank or its parent (foreign banking organization or FBO) may exercise in the United States if it successfully elects to be treated U.S. Financial Holding Companies § 11:1 953 as a U.S. financial holding company (FHC). We first describe the restrictions imposed by the Bank Holding Company Act of 1956 (BHC Act) on an FBO's power to engage in nonbanking activities or make nonbanking investments in the United States if it owns or controls a U.S. bank or otherwise has or acquires a U.S. commercial banking presence but does not qualify for or elect to be treated as an FHC. We then summarize the expanded powers that an FBO may exercise if it qualifies and elects to be treated as an FHC under the BHC Act. We next set forth the conditions and procedures for becoming an FHC including the minimum capital requirements that FHCs must meet. We then elaborate on an FHC's expanded powers, focusing on securities underwriting and dealing, insurance underwriting, merchant banking, insurance company portfolio investments, commodities, hedge funds, and real estate powers. We then discuss the streamlined notice and approval procedures available to FHCs, the consequences of becoming an FHC, and the consequences of failing to maintain the FHC conditions. Finally, we discuss certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) that affect the conditions for qualifying as an FHC or that impose limits on the expanded activities of an FHC, including the new capital requirements, the Volcker Rule, the Swaps Pushout Rule, and amendments to Section 23A of the Federal Reserve Act (FRA).

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