Board of Governors of the Federal Reserve System

Regulation W
Transactions Between Member Banks and Their Affiliates

12 CFR 223; as amended effective January 1, 2020

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Subpart G—Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks

Subpart H—Miscellaneous Interpretations*

AUTHORITY: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c-1(e), 1828(j), 1468(a), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

3–1110

SUBPART A—INTRODUCTION AND DEFINITIONS

SECTION 223.1—Authority, Purpose, and Scope

(a) *Authority.* The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation W) under the authority of sections 23A(f) and 23B(e) of the Federal Reserve Act (FRA) (12 U.S.C. 371c(f), 371c-1(e)) section 11 of the Home Owners' Loan Act (12 U.S.C. 1468), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

(b) *Purpose.* Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1) establish certain quantitative limits and other prudential requirements for loans, purchases of assets, and certain other transactions between a member bank and its affiliates. This regulation implements sections 23A and 23B by defining terms used in the statute, explaining the statute's requirements, and exempting certain transactions.

(c) *Scope.* Sections 23A and 23B and this regulation apply by their terms to ''member banks''—that is, any national bank, state bank, trust company, or other institution that is a member of the Federal Reserve System. In addition, the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) applies sections 23A and 23B to insured state nonmember banks in the same manner and to the same extent as if they were member banks. The Home Owners' Loan Act (12 U.S.C. 1468(a)) also applies sections 23A and 23B to insured savings associations in the same manner and to the same extent as if they were member banks (and imposes two additional restrictions).

3–1111

SECTION 223.2—What is an ''affiliate'' for purposes of sections 23A and 23B and this part?

(a) For purposes of this part and except as provided in paragraphs (b) and (c) of this section, *affiliate* with respect to a member bank means:

(1) *Parent companies.* Any company that controls the member bank;

(2) *Companies under common control by a parent company.* Any company, including any subsidiary of the member bank, that is controlled by a company that controls the member bank;

(3) *Companies under other common control.* Any company, including any subsidiary of the member bank, that is controlled, directly or indirectly, by trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the member bank or any company that controls the member bank;

(4) *Companies with interlocking directorates.* Any company in which a majority of its directors, trustees, or general partners (or individuals exercising similar functions) constitute a majority of the persons holding any such office with the member bank or any company that controls the member bank;

3–1112

(5) *Sponsored and advised companies.* Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the member bank or an affiliate of the member bank;

(6) *Investment companies.*

(i) Any investment company for which the member bank or any affiliate of the member bank serves as an investment ad-

* Interpretations begin at 3–1181.

viser, as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(20)); and

(ii) Any other investment fund for which the member bank or any affiliate of the member bank serves as an investment advisor, if the member bank and its affiliates own or control in the aggregate more than 5 percent of any class of voting securities or of the equity capital of the fund;

(7) *Depository institution subsidiaries.* A depository institution that is a subsidiary of the member bank;

(8) *Financial subsidiaries.* A financial subsidiary of the member bank;

3–1113

(9) *Companies held under merchant banking or insurance company investment authority.*

(i) *In general.* Any company in which a holding company of the member bank owns or controls, directly or indirectly, or acting through one or more other persons, 15 percent or more of the equity capital pursuant to section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) or (I)).

(ii) *General exemption.* A company will not be an affiliate under paragraph (a)(9)(i) of this section if the holding company presents information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the company.

(iii) *Specific exemptions.* A company also will not be an affiliate under paragraph (a)(9)(i) of this section if—

(A) no director, officer, or employee of the holding company serves as a director, trustee, or general partner (or individual exercising similar functions) of the company;

(B) a person that is not affiliated or associated with the holding company owns or controls a greater percentage of the equity capital of the company than is owned or controlled by the holding company, and no more than one officer or employee of the holding company serves as a director or trustee (or individual exercising similar functions) of the company; or

(C) a person that is not affiliated or associated with the holding company owns or controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors or trustees (or individuals exercising similar functions) of the company.

(iv) *Application of rule to private equity funds.* A holding company will not be deemed to own or control the equity capital of a company for purposes of paragraph (a)(9)(i) of this section solely by virtue of an investment made by the holding company in a private equity fund (as defined in the merchant banking subpart of the Board's Regulation Y (12 CFR 225.173(a))) that owns or controls the equity capital of the company unless the holding company controls the private equity fund under 12 CFR 225.173(d)(4).

(v) *Definition.* For purposes of this paragraph (a)(9), *holding company* with respect to a member bank means a company that controls the member bank, or a company that is controlled by shareholders that control the member bank, and all subsidiaries of the company (including any depository institution that is a subsidiary of the company).

3–1114

(10) *Partnerships associated with the member bank or an affiliate.* Any partnership for which the member bank or any affiliate of the member bank serves as a general partner or for which the member bank or any affiliate of the member bank causes any director, officer, or employee of the member bank or affiliate to serve as a general partner;

(11) *Subsidiaries of affiliates.* Any subsidiary of a company described in paragraphs (a)(1) through (10) of this section; and

(12) *Other companies.* Any company that the Board determines by regulation or order, or that the appropriate federal banking agency for the member bank determines by order, to have a relationship with the mem-

ber bank, or any affiliate of the member bank, such that covered transactions by the member bank with that company may be affected by the relationship to the detriment of the member bank.

3–1115

(b) *Affiliate* with respect to a member bank does not include:

(1) *Subsidiaries.* Any company that is a subsidiary of the member bank, unless the company is—

(i) a depository institution;

(ii) a financial subsidiary;

(iii) directly controlled by—

(A) one or more affiliates (other than depository institution affiliates) of the member bank; or

(B) a shareholder that controls the member bank or a group of shareholders that together control the member bank;

(iv) an employee stock option plan, trust, or similar organization that exists for the benefit of the shareholders, partners, members, or employees of the member bank or any of its affiliates; or

(v) any other company determined to be an affiliate under paragraph (a)(12) of this section;

(2) *Bank premises.* Any company engaged solely in holding the premises of the member bank;

(3) *Safe deposit.* Any company engaged solely in conducting a safe deposit business;

(4) *Government securities.* 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; and

(5) *Companies held DPC.* Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted. This exclusion from the definition of affiliate applies 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 years from the date of the exercise of such rights. The Board may authorize, upon application and for good cause shown, extensions of time for not more than one year at a time, but such extensions in the aggregate will not exceed three years.

(c) For purposes of subpart F (implementing section 23B), *affiliate* with respect to a member bank also does not include any depository institution.

3–1116

SECTION 223.3—What are the meanings of the other terms used in sections 23A and 23B and this part?

For purposes of this part:

(a) *Aggregate amount of covered transactions* means the amount of the covered transaction about to be engaged in added to the current amount of all outstanding covered transactions.

(b) *Appropriate federal banking agency* with respect to a member bank or other depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) *Bank holding company* has the same meaning as in 12 CFR 225.2.

(d) *Capital stock and surplus* means the sum of:

(1) a member bank's tier 1 and tier 2 capital under the capital rule of the appropriate Federal banking agency, based on the member bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3);

(2) the balance of a member bank's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in its tier 2 capital under the capital rule of the appropriate Federal banking agency, based on the member bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(3) the amount of any investment by a member bank in a financial subsidiary that counts as a covered transaction and is required to be deducted from the member bank's capital for regulatory capital purposes.

(4) Notwithstanding paragraphs (d)(1) through (3) of this section, for a qualifying community banking organization (as defined in section 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in section 217.12 of this chapter), capital stock and surplus equals tier 1 capital (as defined in section 217.12 of this chapter and calculated in accordance with section 217.12(b) of this chapter) plus allowances for loan and lease losses or adjusted allowance for credit losses, as applicable.

(e) *Carrying value* with respect to a security means (unless otherwise provided) the value of the security on the financial statements of the member bank, determined in accordance with GAAP.

(f) *Company* means a corporation, partnership, limited-liability company, business trust, association, or similar organization and, unless specifically excluded, includes a member bank and a depository institution.

3–1117

(g) *Control.*

(1) *In general. Control* by a company or shareholder over another company means that—

(i) the company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;

(ii) the company or shareholder controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other company; or

(iii) the Board 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.

(2) *Ownership or control of shares as fiduciary.* Notwithstanding any other provision of this regulation, no company will be deemed to control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (a)(3) of section 223.2 or if the company owning or controlling the shares is a business trust.

(3) *Ownership or control of securities by subsidiary.* A company controls securities, assets, or other ownership interests owned or controlled, directly or indirectly, by any subsidiary (including a subsidiary depository institution) of the company.

(4) *Ownership or control of convertible instruments.* A company or shareholder that owns or controls instruments (including options or warrants) that are convertible or exercisable, at the option of the holder or owner, into securities, controls the securities, unless the company or shareholder presents information to the Board that demonstrates, to the Board's satisfaction, that the company or shareholder should not be deemed to control the securities.

(5) *Ownership or control of nonvoting securities.* A company or shareholder that owns or controls 25 percent or more of the equity capital of another company controls the other company, unless the company or shareholder presents information to the Board that demonstrates, to the Board's satisfaction, that the company or shareholder does not control the other company.

3–1118

(h) *Covered transaction* with respect to an affiliate means—

(1) an extension of credit to the affiliate;

(2) a purchase of, or an investment in, a security issued by the affiliate;

(3) a purchase of an asset from the affiliate, including an asset subject to recourse or an agreement to repurchase, except such purchases of real and personal property as may be specifically exempted by the Board by order or regulation;

(4) the acceptance of a security issued by the affiliate as collateral for an extension of credit to any person or company; and

(5) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate, a confirmation of a letter of credit issued by the affiliate, and a cross-affiliate netting arrangement.

(i) *Credit transaction* with an affiliate means—

(1) an extension of credit to the affiliate;

(2) an issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate and a confirmation of a letter of credit issued by the affiliate; and

(3) a cross-affiliate netting arrangement.

3–1119

(j) *Cross-affiliate netting arrangement* means an arrangement among a member bank, one or more affiliates of the member bank, and one or more nonaffiliates of the member bank in which—

(1) a nonaffiliate is permitted to deduct any obligations of an affiliate of the member bank to the nonaffiliate when settling the nonaffiliate's obligations to the member bank; or

(2) the member bank is permitted or required to add any obligations of its affiliate to a nonaffiliate when determining the member bank's obligations to the nonaffiliate.

(k) *Depository institution* means, unless otherwise noted, an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813)), but does not include any branch of a foreign bank. For purposes of this definition, an operating subsidiary of a depository institution is treated as part of the depository institution.

(*l*) *Derivative transaction* means any derivative contract listed in sections III.E.1.a. through d. of appendix A to 12 CFR 225 and any similar derivative contract, including a credit derivative contract.

3–1120

(m) *Eligible affiliated mutual fund securities* has the meaning specified in paragraph (c)(2) of section 223.24.

(n) *Equity capital* means—

(1) with respect to a corporation, preferred stock, common stock, capital surplus, retained earnings, and accumulated other comprehensive income, less treasury stock, plus any other account that constitutes equity of the corporation; and

(2) with respect to a partnership, limited-liability company, or other company, equity accounts similar to those described in paragraph (n)(1) of this section.

(o) *Extension of credit* to an affiliate means the making or renewal of a loan, the granting of a line of credit, or the extending of credit in any manner whatsoever, including on an intraday basis, to an affiliate. An extension of credit to an affiliate includes, without limitation—

(1) an advance to an affiliate by means of an overdraft, cash item, or otherwise;

(2) a sale of federal funds to an affiliate;

(3) a lease that is the functional equivalent of an extension of credit to an affiliate;

(4) an acquisition by purchase, discount, exchange, or otherwise of a note or other obligation, including commercial paper or other debt securities, of an affiliate;

(5) any increase in the amount of, extension of the maturity of, or adjustment to the interest-rate term or other material term of, an extension of credit to an affiliate; and

(6) any other similar transaction as a result of which an affiliate becomes obligated to pay money (or its equivalent).

3–1121

(p) *Financial subsidiary.*

(1) *In general.* Except as provided in paragraph (p)(2) of this section, the term *financial subsidiary* means any subsidiary of a member bank that—

(i) engages, directly or indirectly, in any activity that national banks are not permitted to engage in directly or that is conducted under terms and conditions that differ from those that govern the conduct of such activity by national banks; and

(ii) is not a subsidiary that a national bank is specifically authorized to own or control by the express terms of a federal statute (other than 12 USC 24a), and not by implication or interpretation.

(2) *Exceptions. Financial subsidiary* does not include—

(i) a subsidiary of a member bank that is

considered a financial subsidiary under paragraph (p)(1) of this section solely because the subsidiary engages in the sale of insurance as agent or broker in a manner that is not permitted for national banks; and

(ii) a subsidiary of a state bank (other than a subsidiary described in section 46(a) of the Federal Deposit Insurance Act (12 USC 1831w(a))) that is considered a financial subsidiary under paragraph (p)(1) of this section solely because the subsidiary engages in one or more of the following activities:

(A) an activity that the state bank may engage in directly under applicable federal and state law and that is conducted under the same terms and conditions that govern the conduct of the activity by the state bank; and

(B) an activity that the subsidiary was authorized by applicable federal and state law to engage in prior to December 12, 2002, and that was lawfully engaged in by the subsidiary on that date.

(3) *Subsidiaries of financial subsidiaries.* If a company is a financial subsidiary under paragraphs (p)(1) and (p)(2) of this section, any subsidiary of such a company is also a financial subsidiary.

3–1122

(q) *Foreign bank* and an *agency*, *branch*, or *commercial lending company* of a foreign bank have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 USC 3101).

(r) *GAAP* means U.S. generally accepted accounting principles.

(s) *General-purpose credit card* has the meaning specified in paragraph (c)(4)(ii) of section 223.16.

(t) *In contemplation.* A transaction between a member bank and a nonaffiliate is presumed to be ''in contemplation'' of the nonaffiliate becoming an affiliate of the member bank if the member bank enters into the transaction with the nonaffiliate after the execution of, or commencement of negotiations designed to result in, an agreement under the terms of which the nonaffiliate would become an affiliate.

(u) *Intraday extension of credit* has the meaning specified in paragraph (l)(2) of section 223.42.

3–1123

(v) *Low-quality asset means—*

(1) an asset (including a security) classified as ''substandard,'' ''doubtful,'' or ''loss,'' or treated as ''special mention'' or ''other transfer-risk problems,'' either in the most recent report of examination or inspection of an affiliate prepared by either a federal or state supervisory agency or in any internal classification system used by the member bank or the affiliate (including an asset that receives a rating that is substantially equivalent to ''classified'' or ''special mention'' in the internal system of the member bank or affiliate);

(2) an asset in a nonaccrual status;

(3) an asset on which principal or interest payments are more than 30 days past due;

(4) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor; and

(5) an asset acquired through foreclosure, repossession, or otherwise in satisfaction of a debt previously contracted, if the asset has not yet been reviewed in an examination or inspection.

(w) *Member bank* means any national bank, state bank, banking association, or trust company that is a member of the Federal Reserve System. For purposes of this definition, an operating subsidiary of a member bank is treated as part of the member bank.

3–1124

(x) *Municipal securities* has the same meaning as in section 3(a)(29) of the Securities Exchange Act of 1934 (17 USC 78c(a)(29)).

(y) *Nonaffiliate* with respect to a member bank means any person that is not an affiliate of the member bank.

(z) *Obligations of, or fully guaranteed as to principal and interest by, the United States or its agencies* includes those obligations listed

in 12 CFR 201.108(b) and any additional obligations as determined by the Board. The term does not include Federal Housing Administration or Veterans Administration loans.

(aa) *Operating subsidiary* with respect to a member bank or other depository institution means any subsidiary of the member bank or depository institution other than a subsidiary described in paragraphs (b)(1)(i) through (v) of section 223.2.

(bb) *Person* means an individual, company, trust, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

3–1125

(cc) *Principal underwriter* has the meaning specified in paragraph (c)(1) of section 223.53.

(dd) *Purchase of an asset* by a member bank from an affiliate means the acquisition by a member bank of an asset from an affiliate in exchange for cash or any other consideration, including an assumption of liabilities. The merger of an affiliate into a member bank is a purchase of assets by the member bank from an affiliate if the member bank assumes any liabilities of the affiliate or pays any other form of consideration in the transaction.

(ee) *Riskless principal.* A company is ''acting exclusively as a riskless principal'' if, after receiving an order to buy (or sell) a security from a customer, the company purchases (or sells) the security in the secondary market for its own account to offset a contemporaneous sale to (or purchase from) the customer.

(ff) *Securities* means stocks, bonds, debentures, notes, or similar obligations (including commercial paper).

3–1126

(gg) *Securities affiliate* with respect to a member bank means—

(1) an affiliate of the member bank that is registered with the Securities and Exchange Commission as a broker or dealer; or

(2) any other securities broker or dealer affiliate of a member bank that is approved by the Board.

(hh) *State bank* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 USC 1813).

(ii) *Subsidiary* with respect to a specified company means a company that is controlled by the specified company.

(jj) *Voting securities* has the same meaning as in 12 CFR 225.2.

(kk) *Well capitalized* has the same meaning as in 12 CFR 225.2 and, in the case of any holding company that is not a bank holding company, *well capitalized* means that the holding company has and maintains at least the capital levels required for a bank holding company to be well capitalized under 12 CFR 225.2.

(*ll*) *Well managed* has the same meaning as in 12 CFR 225.2.

3–1127

SUBPART B—GENERAL PROVISIONS OF SECTION 23A

SECTION 223.11—What is the maximum amount of covered transactions that a member bank may enter into with any single affiliate?

A member bank may not engage in a covered transaction with an affiliate (other than a financial subsidiary of the member bank) if the aggregate amount of the member bank's covered transactions with such affiliate would exceed 10 percent of the capital stock and surplus of the member bank.

3–1128

SECTION 223.12—What is the maximum amount of covered transactions that a member bank may enter into with all affiliates?

A member bank may not engage in a covered transaction with any affiliate if the aggregate amount of the member bank's covered transactions with all affiliates would exceed 20 percent of the capital stock and surplus of the member bank.

3–1129

SECTION 223.13—What safety-and-soundness requirement applies to covered transactions?

A member bank may not engage in any covered transaction, including any transaction exempt under this regulation, unless the transaction is on terms and conditions that are consistent with safe and sound banking practices.

3–1130

SECTION 223.14—What are the collateral requirements for a credit transaction with an affiliate?

(a) *Collateral required for extensions of credit and certain other covered transactions.* A member bank must ensure that each of its credit transactions with an affiliate is secured by the amount of collateral required by paragraph (b) of this section at the time of the transaction.

(b) *Amount of collateral required.*

(1) *The rule.* A credit transaction described in paragraph (a) of this section must be secured by collateral having a market value equal to at least—

(i) 100 percent of the amount of the transaction, if the collateral is—

(A) obligations of the United States or its agencies;

(B) obligations fully guaranteed by the United States or its agencies as to principal and interest;

(C) notes, drafts, bills of exchange, or banker's acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(D) a segregated, earmarked deposit account with the member bank that is for the sole purpose of securing credit transactions between the member bank and its affiliates and is identified as such;

(ii) 110 percent of the amount of the transaction, if the collateral is obligations of any state or political subdivision of any state;

(iii) 120 percent of the amount of the transaction, if the collateral is other debt instruments, including loans and other receivables; or

(iv) 130 percent of the amount of the transaction, if the collateral is stock, leases, or other real or personal property.

(2) *Example.* A member bank makes a $1,000 loan to an affiliate. The affiliate posts as collateral for the loan $500 in U.S. Treasury securities, $480 in corporate debt securities, and $130 in real estate. The loan satisfies the collateral requirements of this section because $500 of the loan is 100 percent secured by obligations of the United States, $400 of the loan is 120 percent secured by debt instruments, and $100 of the loan is 130 percent secured by real estate.

3–1131

(c) *Ineligible collateral.* The following items are not eligible collateral for purposes of this section:

(1) low-quality assets;

(2) securities issued by any affiliate;

(3) equity securities issued by the member bank, and debt securities issued by the member bank that represent regulatory capital of the member bank;

(4) intangible assets (including servicing assets), unless specifically approved by the Board; and

(5) guarantees, letters of credit, and other similar instruments.

(d) *Perfection and priority requirements for collateral.*

(1) *Perfection.* A member bank must maintain a security interest in collateral required by this section that is perfected and enforceable under applicable law, including in the event of default resulting from bankruptcy, insolvency, liquidation, or similar circumstances.

(2) *Priority.* A member bank either must obtain a first priority security interest in collateral required by this section or must deduct from the value of collateral obtained by the member bank the lesser of—

(i) the amount of any security interest in the collateral that is senior to that of the member bank; or

(ii) the amount of any credit secured by

the collateral that is senior to that of the member bank.

(3) *Example.* A member bank makes a $2,000 loan to an affiliate. The affiliate grants the member bank a second-priority security interest in a piece of real estate valued at $3,000. Another institution that previously lent $1,000 to the affiliate has a first-priority security interest in the entire parcel of real estate. This transaction is not in compliance with the collateral requirements of this section. Due to the existence of the prior third-party lien on the real estate, the effective value of the real estate collateral for the member bank for purposes of this section is only $2,000—$600 less than the amount of real estate collateral required by this section for the transaction ($2,000 × 130 percent = $2,600).

3–1132

(e) *Replacement requirement for retired or amortized collateral.* A member bank must ensure that any required collateral that subsequently is retired or amortized is replaced with additional eligible collateral as needed to keep the percentage of the collateral value relative to the amount of the outstanding credit transaction equal to the minimum percentage required at the inception of the transaction.

(f) *Inapplicability of the collateral requirements to certain transactions.* The collateral requirements of this section do not apply to the following transactions.

(1) *Acceptances.* An acceptance that already is fully secured either by attached documents or by other property that is involved in the transaction and has an ascertainable market value.

(2) *The unused portion of certain extensions of credit.* The unused portion of an extension of credit to an affiliate as long as the member bank does not have any legal obligation to advance additional funds under the extension of credit until the affiliate provides the amount of collateral required by paragraph (b) of this section with respect to the entire used portion (including the amount of the requested advance) of the extension of credit.

(3) *Purchases of affiliate debt securities in the secondary market.* The purchase of a debt security issued by an affiliate as long as the member bank purchases the debt security from a nonaffiliate in a bona fide secondary-market transaction.

3–1133

SECTION 223.15—May a member bank purchase a low-quality asset from an affiliate?

(a) *In general.* A member bank may not purchase a low-quality asset from an affiliate unless, pursuant to an independent credit evaluation, the member bank had committed itself to purchase the asset before the time the asset was acquired by the affiliate.

(b) *Exemption for renewals of loan participations involving problem loans.* The prohibition contained in paragraph (a) of this section does not apply to the renewal of, or extension of additional credit with respect to, a member bank's participation in a loan to a nonaffiliate that was originated by an affiliate if—

(1) the loan was not a low-quality asset at the time the member bank purchased its participation;

(2) the renewal or extension of additional credit is approved, as necessary to protect the participating member bank's investment by enhancing the ultimate collection of the original indebtedness, by the board of directors of the participating member bank or, if the originating affiliate is a depository institution, by—

(i) an executive committee of the board of directors of the participating member bank; or

(ii) one or more senior management officials of the participating member bank, if—

(A) the board of directors of the member bank approves standards for the member bank's renewals or extensions of additional credit described in this paragraph (b), based on the determination set forth in paragraph (b)(2) of this section;

(B) each renewal or extension of addi-

tional credit described in this paragraph (b) meets the standards; and

(C) the board of directors of the member bank periodically reviews renewals and extensions of additional credit described in this paragraph (b) to ensure that they meet the standards and periodically reviews the standards to ensure that they continue to meet the criterion set forth in paragraph (b)(2) of this section;

(3) the participating member bank's share of the renewal or extension of additional credit does not exceed its proportional share of the original transaction by more than 5 percent, unless the member bank obtains the prior written approval of its appropriate federal banking agency; and

(4) the participating member bank provides its appropriate federal banking agency with written notice of the renewal or extension of additional credit not later than 20 days after consummation.

3–1134

SECTION 223.16—What transactions by a member bank with any person are treated as transactions with an affiliate?

(a) *In general.* A member bank must treat any of its transactions with any person as a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.

(b) *Certain agency transactions.*

(1) Except to the extent described in paragraph (b)(2) of this section, an extension of credit by a member bank to a nonaffiliate is not treated as an extension of credit to an affiliate under paragraph (a) of this section if—

(i) the proceeds of the extension of credit are used to purchase an asset through an affiliate of the member bank, and the affiliate is acting exclusively as an agent or broker in the transaction; and

(ii) the asset purchased by the nonaffiliate is not issued, underwritten, or sold as principal by any affiliate of the member bank.

(2) The interpretation set forth in paragraph (b)(1) of this section does not apply to the extent of any agency fee, brokerage commission, or other compensation received by an affiliate from the proceeds of the extension of credit. The receipt of such compensation may qualify, however, for the exemption contained in paragraph (c)(2) of this section.

3–1135

(c) *Exemptions.* Notwithstanding paragraph (a) of this section, the following transactions are not subject to the quantitative limits of section 223.11 and 223.12 or the collateral requirements of section 223.14. The transactions are, however, subject to the safety-and-soundness requirement of section 223.13 and the market-terms requirement and other provisions of subpart F (implementing section 23B).

(1) *Certain riskless-principal transactions.* An extension of credit by a member bank to a nonaffiliate, if—

(i) the proceeds of the extension of credit are used to purchase a security through a securities affiliate of the member bank, and the securities affiliate is acting exclusively as a riskless principal in the transaction;

(ii) the security purchased by the nonaffiliate is not issued, underwritten, or sold as principal (other than as riskless principal) by any affiliate of the member bank; and

(iii) any riskless-principal markup or other compensation received by the securities affiliate from the proceeds of the extension of credit meets the market-terms standard set forth in paragraph (c)(2) of this section.

(2) *Brokerage commissions, agency fees, and riskless-principal markups.* An affiliate's retention of a portion of the proceeds of an extension of credit described in paragraph (b) or (c)(1) of this section as a brokerage commission, agency fee, or riskless-principal markup, if that commission, fee, or markup is substantially the same as, or lower than, those prevailing at the same time for comparable transactions with or involving other nonaffiliates, in accordance

with the market-terms requirement of section 223.51.

(3) *Preexisting lines of credit.* An extension of credit by a member bank to a nonaffiliate, if—

(i) the proceeds of the extension of credit are used to purchase a security from or through a securities affiliate of the member bank; and

(ii) the extension of credit is made pursuant to, and consistent with any conditions imposed in, a preexisting line of credit that was not established in contemplation of the purchase of securities from or through an affiliate of the member bank.

3–1136

(4) *General-purpose credit card transactions.*

(i) *In general.* An extension of credit by a member bank to a nonaffiliate, if—

(A) the proceeds of the extension of credit are used by the nonaffiliate to purchase a product or service from an affiliate of the member bank; and

(B) the extension of credit is made pursuant to, and consistent with any conditions imposed in, a general-purpose credit card issued by the member bank to the nonaffiliate.

(ii) *Definition. General-purpose credit card* means a credit card issued by a member bank that is widely accepted by merchants that are not affiliates of the member bank for the purchase of products or services, if—

(A) less than 25 percent of the total value of products and services purchased with the card by all cardholders are purchases of products and services from one or more affiliates of the member bank;

(B) all affiliates of the member bank would be permissible for a financial holding company (as defined in 12 USC 1841) under section 4 of the Bank Holding Company Act (12 USC 1843), and the member bank has no reason to believe that 25 percent or more of the total value of products and services purchased with the card by all cardholders are or would be purchases of products and services from one or more affiliates of the member bank; or

(C) the member bank presents information to the Board that demonstrates, to the Board's satisfaction, that less than 25 percent of the total value of products and services purchased with the card by all cardholders are and would be purchases of products and services from one or more affiliates of the member bank.

(iii) *Calculating compliance.* To determine whether a credit card qualifies as a general-purpose credit card under the standard set forth in paragraph (c)(4)(ii)(A) of this section, a member bank must compute compliance on a monthly basis, based on cardholder purchases that were financed by the credit card during the preceding 12 calendar months. If a credit card has qualified as a general-purpose credit card for 3 consecutive months but then ceases to qualify in the following month, the member bank may continue to treat the credit card as a general-purpose credit card for such month and 3 additional months (or such longer period as may be permitted by the Board).

(iv) *Example of calculating compliance with the 25 percent test.* A member bank seeks to qualify a credit card as a general-purpose credit card under paragraph (c)(4)(ii)(A) of this section. The member bank assesses its compliance under paragraph (c)(4)(iii) of this section on the 15th day of every month (for the preceding 12 calendar months). The credit card qualifies as a general-purpose credit card for at least 3 consecutive months. On June 15, 2005, however, the member bank determines that, for the 12-calendar-month period from June 1, 2004, through May 31, 2005, 27 percent of the total value of products and services purchased with the card by all cardholders were purchases of products and services from an affiliate of the member bank. Unless the credit card returns to compliance with the 25 percent limit by the 12-calendar-month period ending August

31, 2005, the card will cease to qualify as a general-purpose credit card as of September 1, 2005. Any outstanding extensions of credit under the credit card that were used to purchase products or services from an affiliate of the member bank would become covered transactions at such time.

3–1137

SUBPART C—VALUATION AND TIMING PRINCIPLES UNDER SECTION 23A

SECTION 223.21—What valuation and timing principles apply to credit transactions?

(a) *Valuation.*

(1) *Initial valuation.* Except as provided in paragraph (a)(2) or (3) of this section, a credit transaction with an affiliate initially must be valued at the greater of—

(i) the principal amount of the transaction;

(ii) the amount owed by the affiliate to the member bank under the transaction; or

(iii) the sum of—

(A) the amount provided to, or on behalf of, the affiliate in the transaction; and

(B) any additional amount that the member bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(2) *Initial valuation of certain acquisitions of a credit transaction.* If a member bank acquires from a nonaffiliate a credit transaction with an affiliate, the covered transaction initially must be valued at the sum of—

(i) the total amount of consideration given (including liabilities assumed) by the member bank in exchange for the credit transaction; and

(ii) any additional amount that the member bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(3) *Debt securities.* The valuation principles of paragraphs (a)(1) and (2) of this section do not apply to a member bank's purchase of or investment in a debt security issued by an affiliate, which is governed by section 223.23.

(4) *Examples.* The following are examples of how to value a member bank's credit transactions with an affiliate.

(i) *Term loan.* A member bank makes a loan to an affiliate that has a principal amount of $100. The affiliate pays $2 in up-front fees to the member bank, and the affiliate receives net loan proceeds of $98. The member bank must initially value the covered transaction at $100.

(ii) *Revolving credit.* A member bank establishes a $300 revolving credit facility for an affiliate. The affiliate has drawn down $100 under the facility. The member bank must value the covered transaction at $300 throughout the life of the facility.

(iii) *Guarantee.* A member bank has issued a guarantee to a nonaffiliate on behalf of an affiliate under which the member bank would be obligated to pay the nonaffiliate $500 if the affiliate defaults on an issuance of debt securities. The member bank must value the guarantee at $500 throughout the life of the guarantee.

(iv) *Acquisition of a loan to an affiliate.* A member bank purchases from a nonaffiliate a fixed-rate loan to an affiliate. The loan has an outstanding principal amount of $100 but, due to movements in the general level of interest rates since the time of the loan's origination, the member bank is able to purchase the loan for $90. The member bank initially must value the credit transaction at $90 (and must ensure that the credit transaction complies with the collateral requirements of section 223.14 at the time of its acquisition of the loan).

3–1138

(b) *Timing.*

(1) *In general.* A member bank engages in a credit transaction with an affiliate at the time during the day that—

(i) the member bank becomes legally obligated to make an extension of credit to, issue a guarantee, acceptance, or letter of

credit on behalf of, or confirm a letter of credit issued by, an affiliate;

(ii) the member bank enters into a cross-affiliate netting arrangement; or

(iii) the member bank acquires an extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(2) *Credit transactions by a member bank with a nonaffiliate that becomes an affiliate of the member bank.*

(i) *In general.* A credit transaction with a nonaffiliate becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the member bank. The member bank must treat the amount of any such credit transaction as part of the aggregate amount of the member bank's covered transactions for purposes of determining compliance with the quantitative limits of sections 223.11 and 223.12 in connection with any future covered transactions. Except as described in paragraph (b)(2)(ii) of this section, the member bank is not required to reduce the amount of its covered transactions with any affiliate because the nonaffiliate has become an affiliate. If the nonaffiliate becomes an affiliate less than one year after the member bank enters into the credit transaction with the nonaffiliate, the member bank also must ensure that the credit transaction complies with the collateral requirements of section 223.14 promptly after the nonaffiliate becomes an affiliate.

(ii) *Credit transactions by a member bank with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank.* Notwithstanding the provisions of paragraph (b)(2)(i) of this section, if a member bank engages in a credit transaction with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank, the member bank must ensure that—

(A) the aggregate amount of the member bank's covered transactions (including any such credit transaction with the nonaffiliate) would not exceed the quantitative limits of section 223.11 or 223.12 at the time the nonaffiliate becomes an affiliate; and

(B) the credit transaction complies with the collateral requirements of section 223.14 at the time the nonaffiliate becomes an affiliate.

(iii) *Example.* A member bank with capital stock and surplus of $1,000 and no outstanding covered transactions makes a $120 unsecured loan to a nonaffiliate. The member bank does not make the loan in contemplation of the nonaffiliate becoming an affiliate. Nine months later, the member bank's holding company purchases all the stock of the nonaffiliate, thereby making the nonaffiliate an affiliate of the member bank. The member bank is not in violation of the quantitative limits of section 223.11 or 223.12 at the time of the stock acquisition. The member bank is, however, prohibited from engaging in any additional covered transactions with the new affiliate at least until such time as the value of the loan transaction falls below 10 percent of the member bank's capital stock and surplus. In addition, the member bank must bring the loan into compliance with the collateral requirements of section 223.14 promptly after the stock acquisition.

3–1139

SECTION 223.22—What valuation and timing principles apply to asset purchases?

(a) *Valuation.*

(1) *In general.* Except as provided in paragraph (a)(2) of this section, a purchase of an asset by a member bank from an affiliate must be valued initially at the total amount of consideration given (including liabilities assumed) by the member bank in exchange for the asset. The value of the covered transaction after the purchase may be reduced to reflect amortization or depreciation of the asset, to the extent that such reductions are consistent with GAAP.

(2) *Exceptions.*

(i) *Purchase of an extension of credit to an affiliate.* A purchase from an affiliate

of an extension of credit to an affiliate must be valued in accordance with section 223.21, unless the note or obligation evidencing the extension of credit is a security issued by an affiliate (in which case the transaction must be valued in accordance with section 223.23).

(ii) *Purchase of a security issued by an affiliate.* A purchase from an affiliate of a security issued by an affiliate must be valued in accordance with section 223.23.

(iii) *Transfer of a subsidiary.* A transfer to a member bank of securities issued by an affiliate that is treated as a purchase of assets from an affiliate under section 223.31 must be valued in accordance with paragraph (b) of section 223.31.

(iv) *Purchase of a line of credit.* A purchase from an affiliate of a line of credit, revolving credit facility, or other similar credit arrangement for a nonaffiliate must be valued initially at the total amount of consideration given by the member bank in exchange for the asset plus any additional amount that the member bank could be required to provide to the borrower under the terms of the credit arrangement.

3–1140

(b) *Timing.*

(1) *In general.* A purchase of an asset from an affiliate remains a covered transaction for a member bank for as long as the member bank holds the asset.

(2) *Asset purchases by a member bank from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank.* If a member bank purchases an asset from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank, the asset purchase becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the member bank. In addition, the member bank must ensure that the aggregate amount of the member bank's covered transactions (including any such transaction with the nonaffiliate) would not exceed the quantitative limits of section 223.11 or 223.12 at the time the nonaffiliate becomes an affiliate.

(c) *Examples.* The following are examples of how to value a member bank's purchase of an asset from an affiliate.

(1) *Cash purchase of assets.* A member bank purchases a pool of loans from an affiliate for $10 million. The member bank initially must value the covered transaction at $10 million. Going forward, if the borrowers repay $6 million of the principal amount of the loans, the member bank may value the covered transaction at $4 million.

(2) *Purchase of assets through an assumption of liabilities.* An affiliate of a member bank contributes real property with a fair market value of $200,000 to the member bank. The member bank pays the affiliate no cash for the property, but assumes a $50,000 mortgage on the property. The member bank has engaged in a covered transaction with the affiliate and initially must value the transaction at $50,000. Going forward, if the member bank retains the real property but pays off the mortgage, the member bank must continue to value the covered transaction at $50,000. If the member bank, however, sells the real property, the transaction ceases to be a covered transaction at the time of the sale (regardless of the status of the mortgage).

3–1141

SECTION 223.23—What valuation and timing principles apply to purchases of and investments in securities issued by an affiliate?

(a) *Valuation.*

(1) *In general.* Except as provided in paragraph (b) of section 223.32 with respect to financial subsidiaries, a member bank's purchase of or investment in a security issued by an affiliate must be valued at the greater of—

(i) the total amount of consideration given (including liabilities assumed) by the member bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; or

(ii) the carrying value of the security.

(2) *Examples.* The following are examples

of how to value a member bank's purchase of or investment in securities issued by an affiliate (other than a financial subsidiary of the member bank).

(i) *Purchase of the debt securities of an affiliate.* The parent holding company of a member bank owns 100 percent of the shares of a mortgage company. The member bank purchases debt securities issued by the mortgage company for $600. The initial carrying value of the securities is $600. The member bank initially must value the investment at $600.

(ii) *Purchase of the shares of an affiliate.* The parent holding company of a member bank owns 51 percent of the shares of a mortgage company. The member bank purchases an additional 30 percent of the shares of the mortgage company from a third party for $100. The initial carrying value of the shares is $100. The member bank initially must value the investment at $100. Going forward, if the member bank's carrying value of the shares declines to $40, the member bank must continue to value the investment at $100.

(iii) *Contribution of the shares of an affiliate.* The parent holding company of a member bank owns 100 percent of the shares of a mortgage company and contributes 30 percent of the shares to the member bank. The member bank gives no consideration in exchange for the shares. If the initial carrying value of the shares is $300, then the member bank initially must value the investment at $300. Going forward, if the member bank's carrying value of the shares increases to $500, the member bank must value the investment at $500.

3–1142

(b) *Timing.*

(1) *In general.* A purchase of or investment in a security issued by an affiliate remains a covered transaction for a member bank for as long as the member bank holds the security.

(2) *A member bank's purchase of or investment in a security issued by a nonaffiliate that becomes an affiliate of the member bank.* A member bank's purchase of or investment in a security issued by a nonaffiliate that becomes an affiliate of the member bank must be treated according to the same transition rules that apply to credit transactions described in paragraph (b)(2) of section 223.21.

3–1143

SECTION 223.24—What valuation principles apply to extensions of credit secured by affiliate securities?

(a) *Valuation of extensions of credit secured exclusively by affiliate securities.* An extension of credit by a member bank to a nonaffiliate secured exclusively by securities issued by an affiliate of the member bank must be valued at the lesser of—

(1) the total value of the extension of credit; or

(2) the fair market value of the securities issued by an affiliate that are pledged as collateral, if the member bank verifies that such securities meet the market-quotation standard contained in paragraph (e) of section 223.42 or the standards set forth in paragraphs (f)(1) and (5) of section 223.42.

(b) *Valuation of extensions of credit secured by affiliate securities and other collateral.* An extension of credit by a member bank to a nonaffiliate secured in part by securities issued by an affiliate of the member bank and in part by nonaffiliate collateral must be valued at the lesser of—

(1) the total value of the extension of credit less the fair market value of the nonaffiliate collateral; or

(2) the fair market value of the securities issued by an affiliate that are pledged as collateral, if the member bank verifies that such securities meet the market-quotation standard contained in paragraph (e) of section 223.42 or the standards set forth in paragraphs (f)(1) and (5) of section 223.42.

3–1144

(c) *Exclusion of eligible affiliated mutual fund securities.*

(1) *The exclusion.* Eligible affiliated mutual fund securities are not considered to be se-

curities issued by an affiliate, and are instead considered to be nonaffiliate collateral, for purposes of paragraphs (a) and (b) of this section, unless the member bank knows or has reason to know that the proceeds of the extension of credit will be used to purchase the eligible affiliated mutual fund securities collateral or will otherwise be used for the benefit of or transferred to an affiliate of the member bank.

(2) *Definition. Eligible affiliated mutual fund securities* with respect to a member bank are securities issued by an affiliate of the member bank that is an open-end investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 USC 80a-1 et seq.), if—

(i) the securities issued by the investment company—

(A) meet the market-quotation standard contained in paragraph (e) of section 223.42;

(B) meet the standards set forth in paragraphs (f)(1) and (5) of section 223.42; or

(C) have closing prices that are made public through a mutual fund ''supermarket'' web site maintained by an unaffiliated securities broker-dealer or mutual fund distributor; and

(ii) the member bank and its affiliates do not own or control in the aggregate more than 5 percent of any class of voting securities or of the equity capital of the investment company (excluding securities held by the member bank or an affiliate in good faith in a fiduciary capacity, unless the member bank or affiliate holds the securities for the benefit of the member bank or affiliate, or the shareholders, employees, or subsidiaries of the member bank or affiliate).

(3) *Example.* A member bank proposes to lend $100 to a nonaffiliate secured exclusively by eligible affiliated mutual fund securities. The member bank knows that the nonaffiliate intends to use all the loan proceeds to purchase the eligible affiliated mutual fund securities that would serve as collateral for the loan. Under the attribution rule in section 223.16, the member bank must treat the loan to the nonaffiliate as a loan to an affiliate, and, because securities issued by an affiliate are ineligible collateral under section 223.14, the loan would not be in compliance with section 223.14.

3–1145

SUBPART D—OTHER REQUIREMENTS UNDER SECTION 23A

SECTION 223.31—How does section 23A apply to a member bank's acquisition of an affiliate that becomes an operating subsidiary of the member bank after the acquisition?

(a) *Certain acquisitions by a member bank of securities issued by an affiliate are treated as a purchase of assets from an affiliate.* A member bank's acquisition of a security issued by a company that was an affiliate of the member bank before the acquisition is treated as a purchase of assets from an affiliate, if—

(1) as a result of the transaction, the company becomes an operating subsidiary of the member bank; and

(2) the company has liabilities, or the member bank gives cash or any other consideration in exchange for the security.

(b) *Valuation.*

(1) *Initial valuation.* A transaction described in paragraph (a) of this section must be valued initially at the greater of—

(i) the sum of—

(A) the total amount of consideration given by the member bank in exchange for the security; and

(B) the total liabilities of the company whose security has been acquired by the member bank, as of the time of the acquisition; or

(ii) the total value of all covered transactions (as computed under this part) acquired by the member bank as a result of the security acquisition.

(2) *Ongoing valuation.* The value of a transaction described in paragraph (a) of this section may be reduced after the initial transfer to reflect—

(i) amortization or depreciation of the as-

sets of the transferred company, to the extent that such reductions are consistent with GAAP; and

(ii) sales of the assets of the transferred company.

3–1146

(c) *Valuation example.* The parent holding company of a member bank contributes between 25 and 100 percent of the voting shares of a mortgage company to the member bank. The parent holding company retains no shares of the mortgage company. The member bank gives no consideration in exchange for the transferred shares. The mortgage company has total assets of $300,000 and total liabilities of $100,000. The mortgage company's assets do not include any loans to an affiliate of the member bank or any other asset that would represent a separate covered transaction for the member bank upon consummation of the share transfer. As a result of the transaction, the mortgage company becomes an operating subsidiary of the member bank. The transaction is treated as a purchase of the assets of the mortgage company by the member bank from an affiliate under paragraph (a) of this section. The member bank initially must value the transaction at $100,000, the total amount of the liabilities of the mortgage company. Going forward, if the member bank pays off the liabilities, the member bank must continue to value the covered transaction at $100,000. If the member bank, however, sells $15,000 of the transferred assets of the mortgage company or if $15,000 of the transferred assets amortize, the member bank may value the covered transaction at $85,000.

3–1147

(d) *Exemption for step transactions.* A transaction described in paragraph (a) of this section is exempt from the requirements of this regulation (other than the safety-and-soundness requirement of section 223.13 and the market-terms requirement of section 223.51) if—

(1) the member bank acquires the securities issued by the transferred company within one business day (or such longer period, up to three months, as may be permitted by the member bank's appropriate federal banking agency) after the company becomes an affiliate of the member bank;

(2) the member bank acquires all the securities of the transferred company that were transferred in connection with the transaction that made the company an affiliate of the member bank;

(3) the business and financial condition (including the asset quality and liabilities) of the transferred company does not materially change from the time the company becomes an affiliate of the member bank and the time the member bank acquires the securities issued by the company; and

(4) at or before the time that the transferred company becomes an affiliate of the member bank, the member bank notifies its appropriate federal banking agency and the Board of the member bank's intent to acquire the company.

3–1148

(e) *Example of step transaction.* A bank holding company acquires 100 percent of the shares of an unaffiliated leasing company. At that time, the subsidiary member bank of the holding company notifies its appropriate federal banking agency and the Board of its intent to acquire the leasing company from its holding company. On the day after consummation of the acquisition, the holding company transfers all of the shares of the leasing company to the member bank. No material change in the business or financial condition of the leasing company occurs between the time of the holding company's acquisition and the member bank's acquisition. The leasing company has liabilities. The leasing company becomes an operating subsidiary of the member bank at the time of the transfer. This transfer by the holding company to the member bank, although deemed an asset purchase by the member bank from an affiliate under paragraph (a) of this section, would qualify for the exemption in paragraph (d) of this section.

3–1149

SECTION 223.32—What rules apply to financial subsidiaries of a member bank?

(a) *Exemption from the 10 percent limit for covered transactions between a member bank*

and a single financial subsidiary. The 10 percent quantitative limit contained in section 223.11 does not apply with respect to covered transactions between a member bank and a financial subsidiary of the member bank. The 20 percent quantitative limit contained in section 223.12 does apply to such transactions.

(b) *Valuation of purchases of or investments in the securities of a financial subsidiary.*

(1) *General rule.* A member bank's purchase of or investment in a security issued by a financial subsidiary of the member bank must be valued at the greater of—

(i) the total amount of consideration given (including liabilities assumed) by the member bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; and

(ii) the carrying value of the security (adjusted so as not to reflect the member bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the member bank's acquisition of the security).

(2) *Carrying value of an investment in a consolidated financial subsidiary.* If a financial subsidiary is consolidated with its parent member bank under GAAP, the carrying value of the member bank's investment in securities issued by the financial subsidiary shall be equal to the carrying value of the securities on parent-only financial statements of the member bank, determined in accordance with GAAP (adjusted so as not to reflect the member bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the member bank's acquisition of the securities).

3–1150

(3) *Examples of the valuation of purchases of and investments in the securities of a financial subsidiary.* The following are examples of how a member bank must value its purchase of or investment in securities issued by a financial subsidiary of the member bank. Each example involves a securities underwriter that becomes a financial subsidiary of the member bank after the transactions described below.

(i) *Initial valuation.*

(A) *Direct acquisition by a member bank.* A member bank pays $500 to acquire 100 percent of the shares of a securities underwriter. The initial carrying value of the shares on the member bank's parent-only GAAP financial statements is $500. The member bank initially must value the investment at $500.

(B) *Contribution of a financial subsidiary to a member bank.* The parent holding company of a member bank acquires 100 percent of the shares of a securities underwriter in a transaction valued at $500, and immediately contributes the shares to the member bank. The member bank gives no consideration in exchange for the shares. The member bank initially must value the investment at the carrying value of the shares on the member bank's parent-only GAAP financial statements. Under GAAP, the member bank's initial carrying value of the shares would be $500.

(ii) *Carrying value not adjusted for earnings and losses of the financial subsidiary.* A member bank and its parent holding company engage in the transaction described in paragraph (b)(3)(i)(B) of this section, and the member bank initially values the investment at $500. In the following year, the securities underwriter earns $25 in profit, which is added to its retained earnings. The member bank's carrying value of the shares of the underwriter is not adjusted for purposes of this part, and the member bank must continue to value the investment at $500. If, however, the member bank contributes $100 of additional capital to the securities underwriter, the member bank must value the aggregate investment at $600.

3–1151

(c) *Treatment of an affiliate's investments in, and extensions of credit to, a financial subsidiary of a member bank.*

(1) *Investments.* Any purchase of, or invest-

ment in, the securities of a financial subsidiary of a member bank by an affiliate of the member bank is treated as a purchase of or investment in such securities by the member bank.

(2) *Extensions of credit that are treated as regulatory capital of the financial subsidiary.* Any extension of credit to a financial subsidiary of a member bank by an affiliate of the member bank is treated as an extension of credit by the member bank to the financial subsidiary if the extension of credit is treated as capital of the financial subsidiary under any federal or state law, regulation, or interpretation applicable to the subsidiary.

(3) *Other extensions of credit.* Any other extension of credit to a financial subsidiary of a member bank by an affiliate of the member bank will be treated as an extension of credit by the member bank to the financial subsidiary, if the Board determines, by regulation or order, that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act or the Gramm-Leach-Bliley Act.

3–1152

SECTION 223.33—What rules apply to derivative transactions?

(a) *Market-terms requirement.* Derivative transactions between a member bank and its affiliates (other than depository institutions) are subject to the market-terms requirement of section 223.51.

(b) *Policies and procedures.* A member bank must establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from its derivative transactions with affiliates in a safe and sound manner. The policies and procedures must at a minimum provide for—

(1) monitoring and controlling the credit exposure arising at any one time from the member bank's derivative transactions with each affiliate and all affiliates in the aggregate (through, among other things, imposing appropriate credit limits, mark-to-market requirements, and collateral requirements); and

(2) ensuring that the member bank's derivative transactions with affiliates comply with the market-terms requirement of section 223.51.

3–1153

(c) *Credit derivatives.* A credit derivative between a member bank and a nonaffiliate in which the member bank provides credit protection to the nonaffiliate with respect to an obligation of an affiliate of the member bank is a guarantee by a member bank on behalf of an affiliate for purposes of this regulation. Such derivatives would include—

(1) an agreement under which the member bank, in exchange for a fee, agrees to compensate the nonaffiliate for any default of the underlying obligation of the affiliate; and

(2) an agreement under which the member bank, in exchange for payments based on the total return of the underlying obligation of the affiliate, agrees to pay the nonaffiliate a spread over funding costs plus any depreciation in the value of the underlying obligation of the affiliate.

3–1154

SUBPART E—EXEMPTIONS FROM THE PROVISIONS OF SECTION 23A

SECTION 223.41—What covered transactions are exempt from the quantitative limits and collateral requirements?

The following transactions are not subject to the quantitative limits of sections 223.11 and 223.12 or the collateral requirements of section 223.14. The transactions are, however, subject to the safety-and-soundness requirement of section 223.13 and the prohibition on the purchase of a low-quality asset of section 223.15.

(a) *Parent institution/subsidiary institution transactions.* Transactions with a depository institution if the member bank controls 80 percent or more of the voting securities of the depository institution or the depository institution controls 80 percent or more of the voting securities of the member bank.

(b) *Transactions between a member bank and a depository institution owned by the same holding company.* Transactions with a depository institution if the same company controls 80 percent or more of the voting securities of the member bank and the depository institution.

(c) *Certain loan purchases from an affiliated depository institution.* Purchasing a loan on a nonrecourse basis from an affiliated depository institution.

3–1155

(d) *Internal-corporate-reorganization transactions.* Purchasing assets from an affiliate (including in connection with a transfer of securities issued by an affiliate to a member bank described in paragraph (a) of section 223.31), if—

(1) the asset purchase is part of an internal corporate reorganization of a holding company and involves the transfer of all or substantially all of the shares or assets of an affiliate or of a division or department of an affiliate;

(2) the member bank provides its appropriate federal banking agency and the Board with written notice of the transaction before consummation, including a description of the primary business activities of the affiliate and an indication of the proposed date of the asset purchase;

(3) the member bank's top-tier holding company commits to its appropriate federal banking agency and the Board before consummation either—

(i) to make quarterly cash contributions to the member bank, for a two-year period following the member bank's purchase, equal to the book value plus any write-downs taken by the member bank, of any transferred assets that have become low-quality assets during the quarter; or

(ii) to repurchase, on a quarterly basis for a two-year period following the member bank's purchase, at a price equal to the book value plus any write-downs taken by the member bank, any transferred assets that have become low-quality assets during the quarter;

(4) the member bank's top-tier holding company complies with the commitment made under paragraph (d)(3) of this section;

(5) a majority of the member bank's directors reviews and approves the transaction before consummation;

(6) the value of the covered transaction (as computed under this part), when aggregated with the value of any other covered transactions (as computed under this part) engaged in by the member bank under this exemption during the preceding 12 calendar months, represents less than 10 percent of the member bank's capital stock and surplus (or such higher amount, up to 25 percent of the member bank's capital stock and surplus, as may be permitted by the member bank's appropriate federal banking agency after conducting a review of the member bank's financial condition and the quality of the assets transferred to the member bank); and

(7) the holding company and all its subsidiary member banks and other subsidiary depository institutions are well capitalized and well managed and would remain well capitalized upon consummation of the transaction.

3–1156

SECTION 223.42—What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality-asset prohibition?

The following transactions are not subject to the quantitative limits of sections 223.11 and 223.12, the collateral requirements of section 223.14, or the prohibition on the purchase of a low-quality asset of section 223.15. The transactions are, however, subject to the safety-and-soundness requirement of section 223.13.

(a) *Making correspondent banking deposits.* Making a deposit in an affiliated depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813)) or affiliated foreign bank that represents an ongoing, working balance maintained in the ordinary course of correspondent business.

(b) *Giving credit for uncollected items.* Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business.

(c) *Transactions secured by cash or U.S. government securities.*

(1) *In general.* Engaging in a credit transaction with an affiliate to the extent that the transaction is and remains secured by—

(i) obligations of the United States or its agencies;

(ii) obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iii) a segregated, earmarked deposit account with the member bank that is for the sole purpose of securing credit transactions between the member bank and its affiliates and is identified as such.

(2) *Example.* A member bank makes a $100 non-amortizing term loan to an affiliate secured by U.S. Treasury securities with a market value of $50 and real estate with a market value of $75. The value of the covered transaction is $50. If the market value of the U.S. Treasury securities falls to $45 during the life of the loan, the value of the covered transaction would increase to $55.

3–1157

(d) *Purchasing securities of a servicing affiliate.* Purchasing a security issued by any company engaged solely in providing services described in section 4(c)(1) of the Bank Holding Company Act (12 USC 1843(c)(1)).

(e) *Purchasing certain liquid assets.* Purchasing an asset having a readily identifiable and publicly available market quotation and purchased at or below the asset's current market quotation. An asset has a readily identifiable and publicly available market quotation if the asset's price is quoted routinely in a widely disseminated publication that is readily available to the general public.

3–1158

(f) *Purchasing certain marketable securities.* Purchasing a security from a securities affiliate, if—

(1) the security has a ''ready market,'' as defined in 17 CFR 240.15c3-1(c)(11)(i);

(2) the security is eligible for a state member bank to purchase directly, subject to the same terms and conditions that govern the investment activities of a state member bank, and the member bank records the transaction as a purchase of a security for purposes of its call report, consistent with the requirements for a state member bank;

(3) the security is not a low-quality asset;

(4) the member bank does not purchase the security during an underwriting, or within 30 days of an underwriting, if an affiliate is an underwriter of the security, unless the security is purchased as part of an issue of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or its agencies;

(5) the security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that—

(i) the price paid by the member bank is at or below the current market quotation for the security; and

(ii) the size of the transaction executed by the member bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; and

(6) the member bank maintains, for a period of two years, records and supporting information that are sufficient to enable the appropriate federal banking agency to ensure the member bank's compliance with the terms of this exemption.

3–1159

(g) *Purchasing municipal securities.* Purchasing a municipal security from a securities affiliate if—

(1) the security is rated by a nationally recognized statistical rating organization or is part of an issue of securities that does not exceed $25 million;

(2) the security is eligible for purchase by a state member bank, subject to the same terms and conditions that govern the investment activities of a state member bank, and the member bank records the transaction as a purchase of a security for purposes of its call report, consistent with the requirements for a state member bank; and

(3) (i) the security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that—

(A) the price paid by the member bank is at or below the current market quotation for the security; and

(B) the size of the transaction executed by the member bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; or

(ii) the price paid for the security can be verified by reference to two or more actual, current price quotes from unaffiliated broker-dealers on the exact security to be purchased or a security comparable to the security to be purchased, where—

(A) the price quotes obtained from the unaffiliated broker-dealers are based on a transaction similar in size to the transaction that is actually executed; and

(B) the price paid is no higher than the average of the price quotes; or

(iii) the price paid for the security can be verified by reference to the written summary provided by the syndicate manager to syndicate members that discloses the aggregate par values and prices of all bonds sold from the syndicate account, if the member bank—

(A) purchases the municipal security during the underwriting period at a price that is at or below that indicated in the summary; and

(B) obtains a copy of the summary from its securities affiliate and retains the summary for three years.

3–1160

(h) *Purchasing an extension of credit subject to a repurchase agreement.* Purchasing from an affiliate an extension of credit that was originated by the member bank and sold to the affiliate subject to a repurchase agreement or with recourse.

(i) *Asset purchases by a newly formed member bank.* The purchase of an asset from an affiliate by a newly formed member bank, if the appropriate federal banking agency for the member bank has approved the asset purchase in writing in connection with its review of the formation of the member bank.

(j) *Transactions approved under the Bank Merger Act.* Any merger or consolidation between a member bank and an affiliated depository institution or U.S. branch or agency of a foreign bank, or any acquisition of assets or assumption of deposit liabilities by a member bank from an affiliated depository institution or U.S. branch or agency of a foreign bank, if the transaction has been approved by the responsible federal banking agency pursuant to the Bank Merger Act (12 USC 1828(c)).

3–1161

(k) *Purchasing an extension of credit from an affiliate.* Purchasing from an affiliate, on a nonrecourse basis, an extension of credit, if—

(1) the extension of credit was originated by the affiliate;

(2) the member bank makes an independent evaluation of the creditworthiness of the borrower before the affiliate makes or commits to make the extension of credit;

(3) the member bank commits to purchase the extension of credit before the affiliate makes or commits to make the extension of credit;

(4) the member bank does not make a blanket advance commitment to purchase extensions of credit from the affiliate; and

(5) the dollar amount of the extension of credit, when aggregated with the dollar amount of all other extensions of credit purchased from the affiliate during the preceding 12 calendar months by the member bank and its depository institution affiliates, does not represent more than 50 percent (or such lower percent as is imposed by the member bank's appropriate federal banking agency) of the dollar amount of extensions of credit originated by the affiliate during the preceding 12 calendar months.

3–1162

(*l*) *Intraday extensions of credit.*

(1) *In general.* An intraday extension of credit to an affiliate, if the member bank—

(i) has established and maintains policies and procedures reasonably designed to manage the credit exposure arising from

the member bank's intraday extensions of credit to affiliates in a safe and sound manner, including policies and procedures for—

(A) monitoring and controlling the credit exposure arising at any one time from the member bank's intraday extensions of credit to each affiliate and all affiliates in the aggregate; and

(B) ensuring that any intraday extension of credit by the member bank to an affiliate complies with the market-terms requirement of section 223.51;

(ii) has no reason to believe that the affiliate will have difficulty repaying the extension of credit in accordance with its terms; and

(iii) ceases to treat any such extension of credit (regardless of jurisdiction) as an intraday extension of credit at the end of the member bank's business day in the United States.

(2) *Definition. Intraday extension of credit* by a member bank to an affiliate means an extension of credit by a member bank to an affiliate that the member bank expects to be repaid, sold, or terminated, or to qualify for a complete exemption under this regulation, by the end of its business day in the United States.

(m) *Riskless-principal transactions.* Purchasing a security from a securities affiliate of the member bank if—

(1) the member bank or the securities affiliate is acting exclusively as a riskless principal in the transaction; and

(2) the security purchased is not issued, underwritten, or sold as principal (other than as riskless principal) by any affiliate of the member bank.

(n) *Securities financing transactions.*

(1) From September 15, 2008, until October 30, 2009 (unless further extended by the Board), securities financing transactions with an affiliate, if:

(i) the security or other asset financed by the member bank in the transaction is of a type that the affiliate financed in the U.S. triparty repurchase agreement market at any time during the week of September 8-12, 2008;

(ii) the transaction is marked to market daily and subject to daily margin-maintenance requirements, and the member bank is at least as overcollateralized in the transaction as the affiliate's clearing bank was overcollateralized in comparable transactions with the affiliate in the U.S. triparty repurchase agreement market on September 12, 2008;

(iii) the aggregate risk profile of the securities financing transactions under this exemption is no greater than the aggregate risk profile of the securities financing transactions of the affiliate in the U.S. triparty repurchase agreement market on September 12, 2008;

(iv) the member bank's top-tier holding company guarantees the obligations of the affiliate under the securities financing transactions (or provides other security to the bank that is acceptable to the Board); and

(v) the member bank has not been specifically informed by the Board, after consultation with the member bank's appropriate federal banking agency, that the member bank may not use this exemption.

(2) For purposes of this exemption:

(i) *Securities financing transaction* means:

(A) a purchase by a member bank from an affiliate of a security or other asset, subject to an agreement by the affiliate to repurchase the asset from the member bank;

(B) a borrowing of a security by a member bank from an affiliate on a collateralized basis; or

(C) a secured extension of credit by a member bank to an affiliate.

(ii) *U.S. triparty repurchase agreement market* means the U.S. market for securities financing transactions in which the counterparties use custodial arrangements provided by JPMorgan Chase Bank or Bank of New York or another financial institution approved by the Board.

(o) *Purchases of certain asset-backed commercial paper.* Purchases of asset-backed commercial paper from an affiliated SEC-

registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7), if the member bank:

(1) Purchases the asset-backed commercial paper on or after September 19, 2008;

(2) Pledges the asset-backed commercial paper to a Federal Reserve Bank to secure financing from the asset-backed commercial paper lending facility (AMLF) established by the Board on September 19, 2008; and

(3) Has not been specifically informed by the Board, after consultation with the member bank's appropriate federal banking agency, that the member bank may not use this exemption.

3–1163

SECTION 223.43—What are the standards under which the Board may grant additional exemptions from the requirements of section 23A?

(a) *The standards.* The Board may, at its discretion, by regulation or order, exempt transactions or relationships from the requirements of section 23A and subparts B, C, and D of this part if it finds such exemptions to be in the public interest and consistent with the purposes of section 23A.

(b) *Procedure.* A member bank may request an exemption from the requirements of section 23A and subparts B, C, and D of this part by submitting a written request to the general counsel of the Board. Such a request must—

(1) describe in detail the transaction or relationship for which the member bank seeks exemption;

(2) explain why the Board should exempt the transaction or relationship; and

(3) explain how the exemption would be in the public interest and consistent with the purposes of section 23A.

3–1164

SUBPART F—GENERAL PROVISIONS OF SECTION 23B

SECTION 223.51—What is the market-terms requirement of section 23B?

A member bank may not engage in a transaction described in section 223.52 unless the transaction is—

(a) on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the member bank, as those prevailing at the time for comparable transactions with or involving nonaffiliates; or

(b) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliates.

3–1165

SECTION 223.52—What transactions with affiliates or others must comply with section 23B's market-terms requirement?

(a) The market-terms requirement of section 223.51 applies to the following transactions:

(1) any covered transaction with an affiliate, unless the transaction is exempt under paragraphs (a) through (c) of section 223.41 or paragraphs (a) through (e) or (h) through (j) of section 223.42;

(2) the sale of a security or other asset to an affiliate, including an asset subject to an agreement to repurchase;

(3) the payment of money or the furnishing of a service to an affiliate under contract, lease, or otherwise;

(4) any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the member bank or to any other person; and

(5) any transaction or series of transactions with a nonaffiliate, if an affiliate—

(i) has a financial interest in the nonaffiliate; or

(ii) is a participant in the transaction or series of transactions.

(b) For the purpose of this section, any transaction by a member bank with any person will be deemed to be a transaction with an affiliate of the member bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, the affiliate.

3–1166

SECTION 223.53—What asset purchases are prohibited by section 23B?

(a) *Fiduciary purchases of assets from an affiliate.* A member bank may not purchase as fiduciary any security or other asset from any affiliate unless the purchase is permitted—

(1) under the instrument creating the fiduciary relationship;

(2) by court order; or

(3) by law of the jurisdiction governing the fiduciary relationship.

(b) *Purchase of a security underwritten by an affiliate.*

(1) A member bank, whether acting as principal or fiduciary, may not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the member bank.

(2) Paragraph (b)(1) of this section does not apply if the purchase or acquisition of the security has been approved, before the security is initially offered for sale to the public, by a majority of the directors of the member bank based on a determination that the purchase is a sound investment for the member bank, or for the person on whose behalf the member bank is acting as fiduciary, as the case may be, irrespective of the fact that an affiliate of the member bank is a principal underwriter of the security.

(3) The approval requirement of paragraph (b)(2) of this section may be met if—

(i) a majority of the directors of the member bank approves standards for the member bank's acquisitions of securities described in paragraph (b)(1) of this section, based on the determination set forth in paragraph (b)(2) of this section;

(ii) each acquisition described in paragraph (b)(1) of this section meets the standards; and

(iii) a majority of the directors of the member bank periodically reviews acquisitions described in paragraph (b)(1) of this section to ensure that they meet the standards and periodically reviews the standards to ensure that they continue to meet the criterion set forth in paragraph (b)(2) of this section.

(4) A U.S. branch, agency, or commercial lending company of a foreign bank may comply with paragraphs (b)(2) and (b)(3) of this section by obtaining the approvals and reviews required by paragraphs (b)(2) and (b)(3) from either—

(i) a majority of the directors of the foreign bank; or

(ii) a majority of the senior executive officers of the foreign bank.

3–1167

(c) *Special definitions.* For purposes of this section:

(1) *Principal underwriter* means any underwriter who, in connection with a primary distribution of securities—

(i) is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(2) *Security* has the same meaning as in section 3(a)(10) of the Securities Exchange Act of 1934 (15 USC 78c(a)(10)).

3–1168

SECTION 223.54—What advertisements and statements are prohibited by section 23B?

(a) *In general.* A member bank and its affiliates may not publish any advertisement or enter into any agreement stating or suggesting that the member bank will in any way be responsible for the obligations of its affiliates.

(b) *Guarantees, acceptances, letters of credit, and cross-affiliate netting arrangements subject to section 23A.* Paragraph (a) of this section does not prohibit a member bank from—

(1) issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate, confirming a letter of credit issued by an affiliate, or entering into a cross-affiliate netting

arrangement, to the extent such transaction satisfies the quantitative limits of sections 223.11 and 223.12 and the collateral requirements of section 223.14, and is otherwise permitted under this regulation; or

(2) making reference to such a guarantee, acceptance, letter of credit, or cross-affiliate netting arrangement if otherwise required by law.

3–1169

SECTION 223.55—What are the standards under which the Board may grant exemptions from the requirements of section 23B?

The Board may prescribe regulations to exempt transactions or relationships from the requirements of section 23B and subpart F of this part if it finds such exemptions to be in the public interest and consistent with the purposes of section 23B.

3–1169.1

SECTION 223.56—What transactions are exempt from the market-terms requirement of section 23B?

The following transactions are exempt from the market-terms requirement of section 223.51.

(a) *Purchases of certain asset-backed commercial paper.* Purchases of asset-backed commercial paper from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7), if the member bank:

(1) Purchases the asset-backed commercial paper on or after September 19, 2008;

(2) Pledges the asset-backed commercial paper to a Federal Reserve Bank to secure financing from the asset-backed commercial paper lending facility (AMLF) established by the Board on September 19, 2008; and

(3) Has not been specifically informed by the Board, after consultation with the member bank's appropriate federal banking agency, that the member bank may not use this exemption.

(b) [Reserved]

3–1170

SUBPART G—APPLICATION OF SECTIONS 23A AND 23B TO U.S. BRANCHES AND AGENCIES OF FOREIGN BANKS

SECTION 223.61—How do sections 23A and 23B apply to U.S. branches and agencies of foreign banks?

(a) *Applicability of sections 23A and 23B to foreign banks engaged in underwriting insurance, underwriting or dealing in securities, merchant banking, or insurance company investment in the United States.* Except as provided in this subpart, sections 23A and 23B of the Federal Reserve Act and the provisions of this regulation apply to each U.S. branch, agency, or commercial lending company of a foreign bank in the same manner and to the same extent as if the branch, agency, or commercial lending company were a member bank.

(b) *Affiliate defined.* For purposes of this subpart, any company that would be an affiliate of a U.S. branch, agency, or commercial lending company of a foreign bank if such branch, agency, or commercial lending company were a member bank is an affiliate of the branch, agency, or commercial lending company if the company also is—

(1) directly engaged in the United States in any of the following activities:

(i) insurance underwriting pursuant to section 4(k)(4)(B) of the Bank Holding Company Act (12 USC 1843(k)(4)(B));

(ii) securities underwriting, dealing, or market making pursuant to section 4(k)(4)(E) of the Bank Holding Company Act (12 USC 1843(k)(4)(E));

(iii) merchant banking activities pursuant to section 4(k)(4)(H) of the Bank Holding Company Act (12 USC 1843(k)(4)(H)) (but only to the extent that the proceeds of the transaction are used for the purpose of funding the affiliate's merchant banking activities);

(iv) insurance company investment activities pursuant to section 4(k)(4)(I) of the Bank Holding Company Act (12 USC 1843(k)(4)(I)); or

(v) any other activity designated by the Board;

(2) a portfolio company (as defined in the merchant banking subpart of Regulation Y (12 CFR 225.177(c))) controlled by the foreign bank or an affiliate of the foreign bank or a company that would be an affiliate of the branch, agency, or commercial lending company of the foreign bank under paragraph (a)(9) of section 223.2 if such branch, agency, or commercial lending company were a member bank; or

(3) a subsidiary of an affiliate described in paragraph (b)(1) or (2) of this section.

(c) *Capital stock and surplus.* For purposes of this subpart, the ''capital stock and surplus'' of a U.S. branch, agency, or commercial lending company of a foreign bank will be determined by reference to the capital of the foreign bank as calculated under its home-country capital standards.

SUBPART H—MISCELLANEOUS INTERPRETATIONS

See 3–1181.

3–1171

SUBPART I—SAVINGS ASSOCIATIONS—TRANSACTIONS WITH AFFILIATES

SECTION 223.72—Transactions with Affiliates

(a) *Scope.*

(1) This subpart implements section 11(a) of the Home Owners' Loan Act (12 U.S.C. 1468(a)). Section 11(a) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c1) to every savings association in the same manner and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes the Board to impose additional restrictions on a savings association's transactions with affiliates.

(2) For the purposes of this subpart, ''savings association'' is defined at section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and also includes any savings bank or any cooperative bank that is a savings association under 12 U.S.C. 1467a(l). A non-affiliate subsidiary of a savings association is treated as part of the savings association. For purposes of this subpart, a ''non-affiliate subsidiary'' is a subsidiary of a savings association other than a subsidiary described at 12 CFR 223.2(b)(1)(i), and (b)(1)(iii) through (v).

(b) *Sections 23A and 23B of the FRA.* A savings association must comply with sections 23A and 23B of the Federal Reserve Act and this part as if it were a member bank, except as described in the following chart.

Provision of Regulation W	Application
(1) 12 CFR 223.2(a)(8)—''Affiliate'' includes a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(2) 12 CFR 223.2(a)(12)—Determination that ''affiliate'' includes other types of companies.	Read to include the following statement: ''Affiliate also includes any company that the Board determines, by order or regulation, to present a risk to the safety and soundness of the savings association.''
(3) 12 CFR 223.2(b)(1)(ii)—''Affiliate'' includes a subsidiary that is a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(4) 12 CFR 223.3(d)—Definition of ''capital stock and surplus.''	''Capital stock and surplus'' for a savings association has the same meaning as under the regulatory capital requirements applicable to that savings association.
(5) 12 CFR 223.3(h)(1)—Section 23A covered transactions include an extension of credit to the affiliate.	Read to incorporate paragraph (c)(1) of this section, which prohibits loans or extensions of credit to an affiliate, unless the affiliate is engaged only in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in Regulation LL at 12 CFR 238.54.
(6) 12 CFR 223.3(h)(2)—Section 23A covered transactions include a purchase of or investment in securities issued by an affiliate.	Read to incorporate paragraph (c)(2) of this section, which prohibits purchases and investments in securities issued by an affiliate, other than with respect to shares of a subsidiary.
(7) 12 CFR 223.3(k)—Definition of ''depository institution.''	Read to include the following statement: ''For the purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the depository institution.''
(8) 12 CFR 223.3(p)—Definition of ''financial subsidiary.''	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(9) 12 CFR 223.3(w)—Definition of ''member bank.''	Read to include the following statement: ''Member bank also includes a savings association. For purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the savings association.''
(10) 12 CFR 223.3(aa)—Definition of ''operating subsidiary.''	Does not apply.
(11) 12 CFR 223.31—Application of section 23A to an acquisition of an affiliate that becomes an operating subsidiary.	Read to refer to ''a non-affiliate subsidiary'' instead of ''operating subsidiary.''
(12) 12 CFR 223.32—Rules that apply to financial subsidiaries of a bank.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(13) 12 CFR 223.42(f)(2)—Exemption for purchasing certain marketable securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(14) 12 CFR 223.42(g)(2)—Exemption for purchasing municipal securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(15) 12 CFR 223.61—Application of sections 23A and 23B to U.S. branches and agencies of foreign banks.	Does not apply to savings associations or their subsidiaries.

(c) *Additional prohibitions and restrictions.* A savings association must comply with the additional prohibitions and restrictions in this paragraph (c). Except as described in paragraph (b) of this section, the definitions in this part apply to these additional prohibitions and restrictions.

(1) *Loans and extensions of credit.*

(i) A savings association may not make a loan or other extension of credit to an affiliate, unless the affiliate is solely engaged in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in section 238.54 of Regulation LL (12 CFR 238.54). A loan or extension of credit to a third party is not prohibited merely because proceeds of the transaction are used for the benefit of, or are transferred to, an affiliate.

(ii) If the Board determines that a par-

ticular transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in activities other than those described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in section 238.54 of Regulation LL (12 CFR 238.54), or the Board has other supervisory concerns concerning the transaction, the Board may inform the savings association that the transaction is prohibited under this paragraph (c)(1), and require the savings association to divest the loan, unwind the transaction, or take other appropriate action.

(2) *Purchases or investments in securities.* A savings association may not purchase or invest in securities issued by any affiliate other than with respect to shares of a subsidiary. For the purposes of this paragraph (c)(2), subsidiary includes a bank and a savings association.

Statutory Authority for Regulation W

3–1175

FEDERAL RESERVE ACT

SECTION 23A—Relations with Affiliates

(a) *Restrictions on transactions with affiliates.*

(1) A member bank and its subsidiaries may engage in a covered transaction with an affiliate only if—

(A) in the case of any affiliate, the aggregate amount of covered transactions of the member bank and its subsidiaries will not exceed 10 per centum of the capital stock and surplus of the member bank; and

(B) in the case of all affiliates, the aggregate amount of covered transactions of the member bank and its subsidiaries will not exceed 20 per centum of the capital stock and surplus of the member bank.

(2) For the purpose of this section, any transaction by a member bank with any person shall be deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.

(3) A member bank and its subsidiaries may not purchase a low-quality asset from an affiliate unless the bank or such subsidiary, pursuant to an independent credit evaluation, committed itself to purchase such asset prior to the time such asset was acquired by the affiliate.

(4) Any covered transactions and any transactions exempt under subsection (d) between a member bank and an affiliate shall be on terms and conditions that are consistent with safe and sound banking practices.

3–1175.1

(b) *Definitions.* For the purpose of this section—

(1) the term ''affiliate'' with respect to a member bank means—

(A) any company that controls the member bank and any other company that is controlled by the company that controls the member bank;

(B) a bank subsidiary of the member bank;

(C) any company—

(i) 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 member bank or any company that controls the member bank; or

(ii) in which a majority of its directors or trustees constitute a majority of the persons holding any such office with the member bank or any company that controls the member bank;

(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and

(E) any company that the Board determines by regulation or order to have a relationship with the member bank or any subsidiary or affiliate of the member bank, such that covered transactions by the member bank or its subsidiary with that company may be affected by the relationship to the detriment of the member bank or its subsidiary; and

3–1175.2

(2) The following shall not be considered to be an affiliate:

(A) any company, other than a bank, that is a subsidiary of a member bank, unless a determination is made under paragraph (1)(E) not to exclude such subsidiary company from the definition of affiliate;

(B) any company engaged solely in holding the premises of the member bank;

(C) any company engaged solely in conducting a safe deposit business;

(D) 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; and

(E) 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 years from the date of the exercise of such rights or the effective date of this Act, whichever date is later, subject, upon application, to authorization by the Board for good cause shown of extensions of time for not more than one year at a time, but such extensions in the aggregate shall not exceed three years;

3–1175.3

(3) (A) a company or shareholder shall be deemed to have control over another company if—

(i) such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

(ii) such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company; or

(iii) the Board determines, after notice and opportunity for hearing, that such company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company; and

(B) notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (1)(C) of this subsection or if the company owning or controlling such shares is a business trust;

3–1175.4

(4) the term ''subsidiary'' with respect to a specified company means a company that is controlled by such specified company;

(5) the term ''bank'' includes a State bank, national bank, banking association, and trust company;

(6) the term ''company'' means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term ''company'' includes a ''member bank'' and a ''bank'';

(7) the term ''covered transaction'' means with respect to an affiliate of a member bank—

(A) a loan or extension of credit to the affiliate, including a purchase of assets subject to an agreement to repurchase;

(B) a purchase of or an investment in securities issued by the affiliate;

(C) a purchase of assets from the affiliate, except such purchase of real and personal property as may be specifically exempted by the Board by order or regulation;

(D) the acceptance of securities or other debt obligations issued by the affiliate as collateral security for a loan or extension of credit to any person or company;

(E) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate;

(F) a transaction with an affiliate that involves the borrowing or lending of securities, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate; or

(G) a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate;

3–1175.5

(8) the term ''aggregate amount of covered transactions'' means the amount of the covered transactions about to be engaged in added to the current amount of all outstanding covered transactions;

(9) the term ''securities'' means stocks, bonds, debentures, notes, or other similar obligations; and

(10) the term ''low-quality asset'' means an asset that falls in any one or more of the following categories:

(A) an asset classified as ''substandard'', ''doubtful'', or ''loss'' or treated as ''other loans especially mentioned'' in the

most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency;

(B) an asset in a nonaccrual status;

(C) an asset on which principal or interest payments are more than thirty days past due; or

(D) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.

3–1175.6

(11) *Rebuttable presumption of control of portfolio companies.* In addition to paragraph (3), a company or shareholder shall be presumed to control any other company if the company or shareholder, directly or indirectly, or acting through 1 or more other persons, owns or controls 15 percent or more of the equity capital of the other company pursuant to subparagraph (H) or (I) of section 4(k)(4) of the Bank Holding Company Act of 1956 or rules adopted under section 122 of the Gramm-Leach-Bliley Act, if any, unless the company or shareholder provides information acceptable to the Board to rebut this presumption of control.

3–1175.7

(c) *Collateral for certain transactions with affiliates.*

(1) Each loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate by a member bank or its subsidiary, and any credit exposure of a member bank or a subsidiary to an affiliate resulting from a securities borrowing or lending transaction, or a derivative transaction, shall be secured at all times by collateral having a market value equal to—

(A) 100 per centum of the amount of such loan or extension of credit, guarantee, acceptance, letter of credit, or credit exposure if the collateral is composed of—

(i) obligations of the United States or its agencies;

(ii) obligations fully guaranteed by the United States or its agencies as to principal and interest;

(iii) notes, drafts, bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(iv) a segregated, earmarked deposit account with the member bank;

(B) 110 per centum of the amount of such loan or extension of credit, guarantee, acceptance, letter of credit, or credit exposure if the collateral is composed of obligations of any State or political subdivision of any State;

(C) 120 per centum of the amount of such loan or extension of credit, guarantee, acceptance, letter of credit, or credit exposure if the collateral is composed of other debt instruments, including receivables; or

(D) 130 per centum of the amount of such loan or extension of credit, guarantee, acceptance, letter of credit, or credit exposure if the collateral is composed of stock, leases, or other real or personal property.

3–1175.8

(2) A low-quality asset shall not be acceptable as collateral for a loan or extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate, or credit exposure to an affiliate resulting from a securities borrowing or lending transaction, or derivative transaction.

(3) The securities or other debt obligations issued by an affiliate of the member bank shall not be acceptable as collateral for a loan or extension of credit to, guarantee, acceptance, or letter of credit issued on behalf of, or credit exposure from a securities borrowing or lending transaction, or derivative transaction to, that affiliate or any other affiliate of the member bank.

(4) The collateral requirements of this paragraph shall not be applicable to an acceptance that is already fully secured either by attached documents or by other property having an ascertainable market value that is involved in the transaction.

3–1175.9

(d) *Exemptions.* The provisions of this section, except paragraph (a)(4), shall not be applicable to—

(1) any transaction, subject to the prohibition contained in subsection (a)(3), with a bank—

(A) which controls 80 per centum or more of the voting shares of the member bank;

(B) in which the member bank controls 80 per centum or more of the voting shares; or

(C) in which 80 per centum or more of the voting shares are controlled by the company that controls 80 per centum or more of the voting shares of the member bank;

(2) making deposits in an affiliated bank or affiliated foreign bank in the ordinary course of correspondent business, subject to any restrictions that the Board may prescribe by regulation or order;

(3) giving immediate credit to an affiliate for uncollected items received in the ordinary course of business;

(4) making a loan or extension of credit to, issuing a guarantee, acceptance, or letter of credit on behalf of, or having credit exposure resulting from a securities borrowing or lending transaction, or derivative transaction to, an affiliate that is fully secured by—

(A) obligations of the United States or its agencies;

(B) obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(C) a segregated, earmarked deposit account with the member bank;

(5) purchasing securities issued by any company of the kinds described in section 4(c)(1) of the Bank Holding Company Act of 1956;

(6) purchasing assets having a readily identifiable and publicly available market quotation and purchased at that market quotation or, subject to the prohibition contained in subsection (a)(3), purchasing loans on a nonrecourse basis from affiliated banks; and

(7) purchasing from an affiliate a loan or extension of credit that was originated by the member bank and sold to the affiliate subject to a repurchase agreement or with recourse.

3–1176

(e) *Rules relating to banks with financial subsidiaries.*

(1) *Financial subsidiary defined.* For purposes of this section and section 23B, the term ''financial subsidiary'' means any company that is a subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States.

(2) *Financial subsidiary treated as an affiliate.* For purposes of applying this section and section 23B, and notwithstanding subsection (b)(2) of this section or section 23B(d)(1), a financial subsidiary of a bank—

(A) shall be deemed to be an affiliate of the bank; and

(B) shall not be deemed to be a subsidiary of the bank.

(3) *Anti-evasion provision.* For purposes of this section and section 23B—

(A) any purchase of, or investment in, the securities of a financial subsidiary of a bank by an affiliate of the bank shall be considered to be a purchase of or investment in such securities by the bank; and

(B) any extension of credit by an affiliate of a bank to a financial subsidiary of the bank shall be considered to be an extension of credit by the bank to the financial subsidiary if the Board determines that such treatment is necessary or appropriate to prevent evasions of this Act and the Gramm-Leach-Bliley Act.

3–1176.1

(f) *Rulemaking and additional exemptions.*

(1) The Board may issue such further regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purposes of this section and to prevent evasions thereof.

(2) (A) *In general.* The Board may, at its discretion, by regulation exempt transactions or relationships from the requirements of this section if—

(i) the Board finds the exemption to be in the public interest and consistent with the purposes of this section, and

notifies the Federal Deposit Insurance Corporation of such finding; and

(ii) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under clause (i), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

(B) *Additional exemptions.*

(i) *National banks.* The Comptroller of the Currency may, by order, exempt a transaction of a national bank from the requirements of this section if—

(I) the Board and the Office of the Comptroller of the Currency jointly find the exemption to be in the public interest and consistent with the purposes of this section and notify the Federal Deposit Insurance Corporation of such finding; and

(II) before the end of the 60-day period beginning on the date on which the Federal Deposit Insurance Corporation receives notice of the finding under subclause (I), the Federal Deposit Insurance Corporation does not object, in writing, to the finding, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

(ii) *State banks.* The Federal Deposit Insurance Corporation may, by order, exempt a transaction of a State nonmember bank, and the Board may, by order, exempt a transaction of a State member bank, from the requirements of this section if—

(I) the Board and the Federal Deposit Insurance Corporation jointly find that the exemption is in the public interest and consistent with the purposes of this section; and

(II) the Federal Deposit Insurance Corporation finds that the exemption does not present an unacceptable risk to the Deposit Insurance Fund.

(3) *Rulemaking required concerning derivative transactions and intraday credit.*

(A) *In general.* Not later than 18 months after the date of the enactment of the Gramm-Leach-Bliley Act, the Board shall adopt final rules under this section to address as covered transactions credit exposure arising out of derivative transactions between member banks and their affiliates and intraday extensions of credit by member banks to their affiliates.

(B) *Effective date.* The effective date of any final rule adopted by the Board pursuant to subparagraph (A) shall be delayed for such period as the Board deems necessary or appropriate to permit banks to conform their activities to the requirements of the final rule without undue hardship.

(4) *Amounts of covered transactions.* The Board may issue such regulations or interpretations as the Board determines are necessary or appropriate with respect to the manner in which a netting agreement may be taken into account in determining the amount of a covered transaction between a member bank or a subsidiary and an affiliate, including the extent to which netting agreements between a member bank or a subsidiary and an affiliate may be taken into account in determining whether a covered transaction is fully secured for purposes of subsection (d)(4). An interpretation under this paragraph with respect to a specific member bank, subsidiary, or affiliate shall be issued jointly with the appropriate federal banking agency for such member bank, subsidiary, or affiliate.

[12 USC 371c. As added by act of June 16, 1933 (48 Stat. 183) and amended by acts of Aug. 23, 1935 (49 Stat. 717); June 30, 1954 (68 Stat. 358); Sept. 8, 1959 (73 Stat. 457); July 1, 1966 (80 Stat. 241, 243); Oct. 15, 1982 (96 Stat. 1515); Jan. 12, 1983 (96 Stat. 2509); Nov. 12, 1999 (113 Stat. 1378, 1379, 1380); and July 21, 2010 (124 Stat. 1608, 1611). Section 410 of the Garn-St Germain Depository Institutions Act of 1982, which completely revised this section, provides in paragraph (c) (12 USC 371c note) the following:

> (c) Section 23A of the Federal Reserve Act, as amended by this section, shall apply to any transaction entered into after the date of enactment of this Act [October 15, 1982], except for transactions which are the subject of a binding written contract or commitment entered into on or before July 28, 1982, and except that any renewal of a participation in a loan outstanding on July 28, 1982, to a company that becomes an affiliate as a result of the enactment of this Act, or any participation in a loan to such an affiliate emanating from the

renewal of a binding written contract or commitment outstanding on July 28, 1982, shall not be subject to the collateral requirements of this Act.]

3–1176.2

SECTION 23B—Restrictions on Transactions with Affiliates

(a) *In general.*

(1) *Terms.* A member bank and its subsidiaries may engage in any of the transactions described in paragraph (2) only—

(A) on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or

(B) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

3–1176.3

(2) *Transactions covered.* Paragraph (1) applies to the following:

(A) Any covered transaction with an affiliate.

(B) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase.

(C) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise.

(D) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or to any other person.

(E) Any transaction or series of transactions with a third party—

(i) if an affiliate has a financial interest in the third party, or

(ii) if an affiliate is a participant in such transaction or series of transactions.

(3) *Transactions that benefit an affiliate.* For the purpose of this subsection, any transaction by a member bank or its subsidiary with any person shall be deemed to be a transaction with an affiliate of such bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.

3–1176.4

(b) *Prohibited transactions.*

(1) *In general.* A member bank or its subsidiary—

(A) shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted—

(i) under the instrument creating the fiduciary relationship,

(ii) by court order, or

(iii) by law of the jurisdiction governing the fiduciary relationship; and

(B) whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such bank.

(2) *Exceptions.* Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank based on a determination that the purchase is a sound investment for the bank irrespective of the fact that an affiliate of the bank is a principal underwriter of the securities.

3–1176.5

(3) *Definitions.* For the purpose of this subsection—

(A) the term ''security'' has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934; and

(B) the term ''principal underwriter'' means any underwriter who, in connection with a primary distribution of securities—

(i) is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) is allowed a rate of gross commission, spread, or other profit greater

than the rate allowed another underwriter participating in the distribution.

3–1176.6

(c) *Advertising restriction.* A member bank or any subsidiary or affiliate of a member bank shall not publish any advertisement or enter into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.

(d) *Definitions.* For the purpose of this section—

(1) the term ''affiliate'' has the meaning given to such term in section 23A (but does not include any company described in section (b)(2) of such section or any bank);

(2) the terms ''bank'', ''subsidiary'', ''person'', and ''security'' (other than security as used in subsection (b)) have the meanings given to such terms in section 23A; and

(3) the term ''covered transaction'' has the meaning given to such term in section 23A(but does not include any transaction which is exempt from such definition under subsection (d) of such section).

3–1176.7

(e) *Regulations.*

(1) *In general.* The Board may prescribe regulations to administer and carry out the purposes of this section, including—

(A) regulations to further define terms used in this section; and

(B) subject to paragraph (2), if the Board finds that an exemption or exclusion is in the public interest and is consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding, regulations to—

(i) exempt transactions or relationships from the requirements of this section; and

(ii) exclude any subsidiary of a bank holding company from the definition of affiliate for purposes of this section.

(2) *Exception.* The Board may grant an exemption or exclusion under this subsection only if, during the 60-day period beginning on the date of receipt of notice of the finding from the Board under paragraph (1)(B), the Federal Deposit Insurance Corporation does not object, in writing, to such exemption or exclusion, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

[12 USC 371c-1. As added by act of Aug. 10, 1987 (101 Stat. 564) and amended by acts of Nov. 12, 1999 (113 Stat. 1480) and July 21, 2010 (124 Stat. 1610.]

See section 11 of the Home Owners' Loan Act at 3–1025.5.

See section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act at 3–1026.