

FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations]

Transactions Between Member Banks and Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Sections 23A and 23B of the Federal Reserve Act restrict the ability of a member bank to engage in certain transactions with an affiliate. Since its initial passage in 1933, the Board and its staff have issued numerous formal and informal interpretations of section 23A. On October 31, 2002, the Board adopted a new Regulation W, which implements sections 23A and 23B and incorporates most of these interpretations. Accordingly, the Board is rescinding most of its formal interpretations of section 23A and removing these interpretations, as well as most staff opinions relating to section 23A, from the Federal Reserve Regulatory Service. With the adoption of Regulation W, most of the Board's previous section 23A interpretations are outdated or unnecessary, and the Board believes that reliance on the new Regulation W will eliminate confusion and simplify compliance with sections 23A and 23B.

EFFECTIVE DATE: April 1, 2003.

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SUPPLEMENTARY INFORMATION: Sections 23A and 23B of the Federal Reserve Act are two of the most important statutory protections against a bank suffering losses because of its transactions with affiliates and, correspondingly, are two of the most effective means of limiting the ability of a bank to transfer to its affiliates the subsidy arising from the bank's access to the Federal safety net. Although sections 23A and 23B each explicitly grant the Board broad authority to issue regulations to administer these sections,¹ the Board never issued a regulation fully implementing either section. Instead, banks seeking guidance on how to comply with sections 23A and 23B have relied on a series of Board interpretations and informal staff guidance. Some of these Board interpretations are codified in part 250 of title 12 of the Code of Federal Regulations. Many of the staff interpretations are publicly available, and the summaries of the interpretations can be found in the Board's loose-leaf service, the Federal Reserve Regulatory Service.

On October 31, 2002, the Board adopted Regulation W, which comprehensively implements sections 23A and 23B. In order to avoid

confusion and simplify compliance with sections 23A and 23B, the Board is deleting the section 23A interpretations that are codified in part 250 of title 12 of the Code of Federal Regulations. In addition, the Board is deleting most of the summaries of staff interpretations of section 23A that are published in the Federal Reserve Regulatory Service.

Below is a chart of the interpretations of sections 23A and 23B found in the Federal Reserve Regulatory Service along with an indication of whether each summary will be retained in the Federal Reserve Regulatory Service or removed. For those summaries that will be removed, the chart identifies the provision of Regulation W or an appropriate statute that renders the summary unnecessary or inconsistent with current law. The Board believes that a few existing interpretations of section 23A would provide helpful guidance to banking organizations, but are too fact-specific to include in Regulation W; the summaries of these interpretations will remain in the Federal Reserve Regulatory Service. All new Board interpretations of sections 23A and 23B will be codified under part 223 instead of the Miscellaneous Interpretations found in part 250, and will be available on the Board's public Web site, <http://www.federalreserve.gov>. Persons desiring older written interpretations will be able to obtain them by filing a request pursuant to the Freedom of Information Act.

DELETIONS FROM THE FEDERAL RESERVE REGULATORY SERVICE

[Board Interpretations]

FRRS No.	Subject	12 CFR reference
3-1118, 12 CFR 250.242	Definition of Capital Stock and Surplus	§ 223.3(d).
3-1120, 1934 Fed. Res. Bull. 391 ..	Collateral—Paper Eligible for Rediscount or Purchase by Federal Reserve Banks.	§ 223.14(b)(1).
3-1121, 1935 Fed. Res. Bull. 395 ..	Collateral—Stock	§ 223.14(b)(1)(iv).
3-1125, 1936 Fed. Res. Bull. 324 ..	Exemptions—Indebtedness for Unpaid Balances Due on Purchased Assets.	No exemption available.
3-1126, S-285, 10/24/41	Exemptions—Relationships Arising Out of Bona Fide Debt Previously Contracted.	§ 223.2(b)(5).
3-1127, 12 CFR 250.240	Exemptions—Loan to Bank Operations Subsidiary	§§ 223.2(b) & (2).
3-1128, 12 CFR 250.241	Exemptions—Transactions Subject to Review Under the Bank Merger Act.	§ 223.42(j).
3-1128.1, 12 CFR 250.245	Exemptions—Loans and Extensions of Credit by Member Bank to Third Party.	§ 223.16(c)(3).
3-1128.2, 12 CFR 250.246	Exemptions—Purchase of Security by Insured Depository Institution from an Affiliate.	§ 223.42(f).
3-1130, 1934 Fed. Res. Bull. 391 ..	Extension of Credit—Loan on Note Bearing Endorsement by Affiliate	Retained.
3-1131, 1951 Fed. Res. Bull. 960 ..	Extension of Credit—Purchase of Affiliate's Notes	§ 223.3(o)(4).
3-1132, 12 CFR 250.160(b)	Extension of Credit—Federal Funds Transaction	§ 223.3(o).
3-1133, 12 CFR 250.250	Extension of Credit—Purchase of Mortgage Note or Participation from Nonbank Affiliates.	§ 223.42(k).
3-1135, 1933 Fed. Res. Bull. 501 ..	Loans & Investments Made Before June 16, 1933	See Preamble For Grandfathering.
3-1136, 1934 Fed. Res. Bull. 391 ..	Limitations on Amount—Loans Secured by Paper Eligible for Rediscount by Federal Reserve Bank.	§ 223.14(b)(1)(C).
3-1137, 12 CFR 250.247	Market Terms Requirement—Derivatives	§ 223.33.

¹ 12 U.S.C. 371c(f), 371c-1(e).

DELETIONS FROM THE FEDERAL RESERVE REGULATORY SERVICE—Continued
[Board Interpretations]

FRRS No.	Subject	12 CFR reference
3-1137.1, 12 CFR 250.248	Market Terms Requirement—Intraday Extensions of Credit by Insured Depository Institutions to Their Affiliates.	§ 223.42(l).
3-1140	Affiliates to Which Applicable—Cotrustee or Coexecutor of Corporation.	§ 223.2(b).
3-1141	Affiliates to Which Applicable	Retained.
3-1142	Affiliates to Which Applicable—Small Business Subsidiary of Bank Holding Company.	§ 223.2(a)(2).
3-1143	Affiliate to Which Applicable—Joint Venture in Which Subsidiary Has 50% Interest.	§ 223.2(b)(1)(iii).
3-1144	Affiliates to Which Applicable—Corporation with Stock Held as Collateral.	§ 223.3(p)(1)(ii).
3-1145	Affiliates to Which Applicable—Corporation Owned by Affiliate Edge Corporation.	§ 223.3(p)(1)(ii).
3-1146	Affiliates to Which Applicable—Trust	Retained.
3-1146.1	Affiliates to Which Applicable—Foreign Affiliate of Domestic Bank Holding Company.	§ 223.2(a)(2).
3-1146.2	Affiliates to Which Applicable—Less Than 25 Percent Control	§ 223.2(a)(3).
3-1146.3	Affiliates to Which Applicable—Agricultural Credit Corporation	§ 223.2(b)(1)(iii).
3-1146.4	Affiliates to Which Applicable—Bank Subsidiaries of Bank Holding Company.	§ 223.2(b)(1).
3-1146.5	Affiliates to Which Applicable—Purchaser of Subsidiary Banks	§ 223.16.
3-1146.6	Affiliates to Which Applicable—Common Shareholders	Retained.
3-1146.61	Affiliates to Which Applicable—Partnership & Association	Retained.
3-1146.7	Affiliates to Which Applicable—Foreign Exchange Fund	Retained.
3-1150	Bank—Savings Loan	12 U.S.C. 1468.
3-1151	Bank—Bank Whose Deposits Are Insured by the FDIC	12 U.S.C. 1828(j).
3-1152	Bank—Foreign Bank	12 U.S.C. 371c(b)(5) & § 223.18.
3-1152.1	Bank—Domestic Branch of a Foreign Bank	12 U.S.C. 371c(b)(5) & § 223.3(k).
3-1152.2	Bank—National Bank Subsidiary	12 U.S.C. 371c(b)(5).
3-1155	Collateral—Automobile Rental Contracts	§ 223.14(b)(1)(iv).
3-1156	Collateral—Stock	§ 223.24.
3-1157	Collateral—“Secured by”	§ 223.14.
3-1158	Collateral—Stock in Wholly Owned Subsidiary	§ 223.14.
3-1160	Collateral—FHA Mortgages	§ 223.3(y).
3-1161	Collateral—U.S. Government Securities	§ 223.14.
3-1162	Collateral—Stock Valuation	Retained.
3-1163	Collateral—Stock Valuation	Retained.
3-1164	Collateral—Stock Valuation	Retained.
3-1164.1	Collateral—Stock of a Subsidiary Bank	§ 223.14(c)(2).
3-1164.2	Collateral—Real Estate	§ 223.14(b)(l)(iv).
3-1164.3	Collateral—Mortgage Servicing Rights	§ 223.14(c)(4).
3-1167	Covered Transactions—Purchase of Affiliate’s Securities	§ 223.3(h)(2).
3-1167.1	Covered Transactions—Purchase of Assets	Retained.
3-1167.2	Covered Transactions—Purchase of Assets	§ 223.42(k).
3-1167.3	Covered Transactions—Acceptance of Securities	Retained.
3-1167.4	Covered Transactions—Issuance of Guarantee	Retained.
3-1167.5	Covered Transactions—Purchase of Leases	§ 223.42(k) & Subpart F.
3-1170	Exemptions—Indebtedness for Unpaid Balances Due on Purchased Assets.	§ 223.3(h).
3-1171	Exemptions—Corporation Holding Premises of Bank	§ 223.2(b)(2).
3-1172	Exemptions—Investment in Agricultural Credit Corporation	§ 223.2.
3-1173	Exemptions—Sale of Assets on Credit	§ 223.3(h)(1).
3-1174	Exemptions—Trust	§ 223.2.
3-1175	Exemptions—Loans to Subsidiary Bank Premises	§ 223.2(b)(2).
3-1176	Exemptions—Corporation Holding Premises of Bank	§ 223.2(b)(2).
3-1177	Exemptions—Bank Operations Subsidiary	§ 223.2(b)(1).
3-1177.1	Exemptions—Bank Controlled by Same Company	§§ 223.41(b) & 223.3(k) & (v).
3-1177.2	Exemptions—Bank Premises Subsidiary	§ 223.2(a)(3) & (b)(2).
3-1177.3	Exemptions—Privately Issued Collateralized Mortgage Obligations	Retained.
3-1177.4	Exemptions—Bank Controlled by Same Company That Is Not Bank Holding Company.	§ 223.41(b).
3-1180	Extension of Credit—Nonrecourse Acquisition of Promissory Note	§ 223.3(o)(4).
3-1181	Extension of Credit—Transaction with Bank Holding Company	§§ 223.3(o) & 223.42(h).
3-1182	Extension of Credit—Guaranteed Debt of Holding Company	§ 223.3(o).
3-1183	Extension of Credit—Participation in Assets Pool	Deleted.
3-1184	Extension of Credit—Purchase of Mortgage Note or Participation from Nonbank Affiliate.	§ 223.42(k).
3-1185	Extension of Credit—GNMA Certificate of Guarantee	Retained.
3-1186	Extension of Credit—Paid Letter of Credit	§ 223.3(o).
3-1187	Extension of Credit—Equipment Lease Agreement	Retained.
3-1188	Extension of Credit—Participation in Mortgage Loan Pool	§ 223.42(k).

DELETIONS FROM THE FEDERAL RESERVE REGULATORY SERVICE—Continued
[Board Interpretations]

FRRS No.	Subject	12 CFR reference
3-1189	Extension of Credit—Finance Company Loan Participation	§ 223.42(k).
3-1189.1	Extension of Credit—Transactions Involving Funding, Letters of Credit & Bankers Acceptance.	§§ 223.3(h)(1) & 223.3(h)(5).
3-1189.2	Extension of Credit—Contingency, Negotiating or Accepting Letters of Credit.	§ 223.3(h).
3-1195	Limitations on Amount—Loans & Investments Made Before June 16, 1933.	See Preamble Grandfathering.
3-1196	Limitations on Amount—Loan Secured by Paper Eligible for Rediscount or Purchase by Federal Reserve Bank.	§ 223.14(b)(i)(C).
3-1197	Limitations on Amount—Capital Stock	§ 223.3(h)(2).
3-1198	Limitations on Amount—Stockholder Ownership & Capital Expenditures.	§§ 223.3(h) & 223.7(c)
3-1199	Limitations on Amount—Valuation of Transactions	§ 223.24(b).
3-1199.5	Low-Quality Asset—Open-End Credit Card Account	Retained.
3-1199.51	Low-Quality Assets—Renewal of a Loan	§ 223.15(b).

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board is not required to publish a regulatory flexibility analysis with this rulemaking.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Board is issuing this deletion of the Board and staff's existing section 23A interpretations as a final rule. Most of the interpretations in question are staff opinions, which were not subject to public comment pursuant to 5 U.S.C. 553(b)(2)(A). The deletion of the Board interpretations from the Code of Federal Regulations is part of the implementation of Regulation W, which the Board issued for public notice and comment on May 11, 2001, and thus further public comment on the deletions is unnecessary. A review of the public

comments on Regulation W can be found in the preamble to Regulation W, 67 FR (2002).

Paperwork Reduction Act

The Board has determined that the removal of the interpretations from the Code of Federal Regulations will not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR part 250

Federal Reserve System.

For reasons set out in the preamble, the Board amends 12 CFR part 250 as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i), 371c(f) and 371c-1(e).

§ 250.160 [Amended]

2. In § 250.160, remove paragraph (b).

§§ 250.240, 250.248 and § 250.250 [Removed]

3. Sections 250.240, 250.241, 250.242, 250.243, 250.244, 250.245, 250.246, 250.247, 250.248, and 250.250 are removed.

By order of the Board of Governors of the Federal Reserve System, November 27, 2002.

Jennifer J. Johnson,
Secretary of the Board.

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