

Federal Reserve System

§ 208.100

§ 208.77 Definitions.

The following definitions shall apply to this subpart:

(a) *Affiliate, Company, Control, and Subsidiary.* The terms “affiliate”, “company”, “control”, and “subsidiary” have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(b) *Appropriate Federal Banking Agency, Depository Institution, Insured Bank and Insured Depository Institution.* The terms “appropriate Federal banking agency”, “depository institution”, “insured bank” and “insured depository institution” have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) *Eligible Debt.* The term “eligible debt” means unsecured debt with an initial maturity of more than 360 days that:

(1) Is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(2) Is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

(d) *Financial Subsidiary.* The term “financial subsidiary” means any company that is controlled by one or more insured depository institutions *other than*:

(1) A subsidiary that only engages in activities that the state member bank is permitted to engage in directly and that are conducted on the same terms and conditions that govern the conduct of the activities by the state member bank; or

(2) A subsidiary that the state member bank is specifically authorized by the express terms of a Federal statute (other than section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*)), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a or 12 U.S.C. 611–631) or the Bank Service Company Act (12 U.S.C. 1861 *et seq.*).

(e) *Long-term issuer credit rating.* The term “long-term issuer credit rating” means a written opinion issued by a nationally recognized statistical rating organization of the bank’s overall ca-

capacity and willingness to pay on a timely basis its unsecured, dollar-denominated financial obligations maturing in not less than one year.

(f) *Well Capitalized.* The term “well capitalized” has the meaning given the term in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831.).

(g) *Well Managed.* The term “well managed” means:

(1) Unless otherwise determined in writing by the appropriate Federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with its most recent examination or subsequent review and at least a rating of 2 for management (if such rating is given); or

(2) In the case of any depository institution that has not been examined by its appropriate Federal banking agency, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

[Reg. H, 65 FR 14814, 15052, Mar. 20, 2000]

Subpart H—Interpretations

SOURCE: Reg. H, 63 FR 37658, July 13, 1998, unless otherwise noted. Redesignated at 65 FR 14814, Mar. 20, 2000.

EFFECTIVE DATE NOTE: At 65 FR 75841, Dec. 4, 2000, subpart H was redesignated as subpart I and a new subpart H was added, effective April 1, 2001. For the convenience of the user, the added text appears after this subpart H.

§ 208.100 Sale of bank’s money orders off premises as establishment of branch office.

(a) The Board of Governors has been asked to consider whether the appointment by a member bank of an agent to sell the bank’s money orders, at a location other than the premises of the bank, constitutes the establishment of a branch office.

(b) Section 5155 of the Revised Statutes (12 U.S.C. 36), which is also applicable to member banks, defines the term branch as including “any branch bank, branch office, branch agency, additional office, or any branch place of

business * * * at which deposits are received, or checks paid, or money lent.” The basic question is whether the sale of a bank’s money orders by an agent amounts to the receipt of deposits at a branch place of business within the meaning of this statute.

(c) Money orders are classified as deposits for certain purposes. However, they bear a strong resemblance to traveler’s checks that are issued by banks and sold off premises. In both cases, the purchaser does not intend to establish a deposit account in the bank, although a liability on the bank’s part is created. Even though they result in a deposit liability, the Board is of the opinion that the issuance of a bank’s money orders by an authorized agent does not involve the receipt of deposits at a “branch place of business” and accordingly does not require the Board’s permission to establish a branch.

§ 208.101 Obligations concerning institutional customers.

(a) As a result of broadened authority provided by the Government Securities Act Amendments of 1993 (15 U.S.C. 780-3 and 780-5), the Board is adopting sales practice rules for the government securities market, a market with a particularly broad institutional component. Accordingly, the Board believes it is appropriate to provide further guidance to banks on their suitability obligations when making recommendations to institutional customers.

(b) The Board’s Suitability Rule, § 208.37(d), is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Banks’ responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Banks are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer.

(c) In recommending to a customer the purchase, sale, or exchange of any government security, the bank shall have reasonable grounds for believing

that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to the customer’s other security holdings and financial situation and needs.

(d) The interpretation in this section concerns only the manner in which a bank determines that a recommendation is suitable for a particular institutional customer. The manner in which a bank fulfills this suitability obligation will vary, depending on the nature of the customer and the specific transaction. Accordingly, the interpretation in this section deals only with guidance regarding how a bank may fulfill customer-specific suitability obligations under § 208.37(d).⁷

(e) While it is difficult to define in advance the scope of a bank’s suitability obligation with respect to a specific institutional customer transaction recommended by a bank, the Board has identified certain factors that may be relevant when considering compliance with § 208.37(d). These factors are not intended to be requirements or the only factors to be considered but are offered merely as guidance in determining the scope of a bank’s suitability obligations.

(f) The two most important considerations in determining the scope of a bank’s suitability obligations in making recommendations to an institutional customer are the customer’s capability to evaluate investment risk independently and the extent to which the customer is exercising independent judgement in evaluating a bank’s recommendation. A bank must determine, based on the information available to it, the customer’s capability to evaluate investment risk. In some cases, the bank may conclude that the customer is not capable of making independent investment decisions in general. In other cases, the institutional customer may have general capability, but may

⁷The interpretation in this section does not address the obligation related to suitability that requires that a bank have “* * * a ‘reasonable basis’ to believe that the recommendation could be suitable for at least some customers.” In the Matter of the Application of F.J. Kaufman and Company of Virginia and Frederick J. Kaufman, Jr., 50 SEC 164 (1989).