

§ 250.250

EFFECTIVE DATE NOTE: At 67 FR 76622, Dec. 12, 2002, § 250.248 was removed, effective Apr. 1, 2003.

§ 250.250 Applicability of section 23A of the Federal Reserve Act to a member State bank's purchase of, or participation in, a loan originated by a mortgage banking affiliate.

(a) A question has been raised as to whether a member bank's purchase, without recourse, and at face value, of any mortgage note, or participation therein, from a mortgage banking subsidiary of its parent bank holding company at the inception of the underlying mortgage loan involves a "loan" or "extension of credit" from the member bank to the affiliate within the meaning of section 23A of the Federal Reserve Act (12 U.S.C. 371c). In the given circumstances, the affiliate originated the mortgage loans at premises other than an office of the member bank and hence was not a company furnishing services to or performing services for the holding company or its banking subsidiaries within the meaning of section 4(c)(1)(C) of the Bank Holding Company Act (12 U.S.C. 1843(c)(1)(C)). Loans or extensions of credit to the affiliate were therefore not entitled to exemption from the provisions of section 23A by virtue of subsection (1) of the final paragraph thereof.

(b) Paragraph 4 of section 23A provides that the term *extension of credit* shall be deemed to include the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse, excepting the acquisition of such paper by a member bank from another bank without recourse. In previously interpreting the statutory provision from which this provision is derived (section 6 of the Bank Holding Company Act of 1956, repealed July 1, 1966), the Board concluded that *discount* in the context of the statute meant *purchase* and that the purchase of notes, bills of exchange, conditional sales contracts or similar paper from an affiliate was subject to the prohibitions of the statute. (1958 Federal Reserve Bulletin 260.) Further, the Board notes that the definition in section 23A is illustrative rather than exclusive. The Board believes that the purposes of

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section 23A justify a broad construction of the definition of *extension of credit* to include certain purchases of obligations, even though the purchases are not made at a discount from face value. A bank's financing of the working capital needs of a mortgage banking affiliate may occur through outright purchases of obligations, and the types of abuses with which section 23A is concerned are likewise possible in such circumstances, since such transactions between affiliates could result in an undue risk to the financial condition of the purchasing bank.

(c) The Board is of the opinion that the purchase by a member State bank of a mortgage note, or participation therein, from a mortgage banking affiliate would involve a loan or extension of credit to the affiliate if the latter had either made, or committed itself to make, the loan or extension of credit evidenced by the note prior to the time when the member bank first obligated itself, by commitment or otherwise, to purchase the loan or a participation therein. However, there would be no loan or extension of credit by the member bank to its mortgage banking affiliate if the member bank's commitment to purchase the loan, or a participation therein, is obtained by the affiliate within the context of a proposed transaction, or series of proposed transactions, in anticipation of the affiliate's commitment to make such loan(s), and is based upon the bank's independent evaluation of the credit worthiness of the mortgagor(s). In these latter circumstances, the member bank would be taking advantage of an investment opportunity rather than being impelled by any improper incentive to alleviate working capital needs of the affiliate that are directly attributable to excessive outstanding commitments.

(d) The Board cautions, however, that it would regard a blanket advance commitment by a member State bank to purchase from its mortgage banking affiliate a stipulated amount of loans, or an amount thereof exceeding defined credit lines of the affiliate, that bears no reference to specific proposed transactions, as involving an unsound banking practice, unless the commitment is conditioned upon compliance of loans

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made thereunder with the requirements of section 23A. It would not suffice to condition such a commitment upon the bank's ultimate approval of the credit standing of the various mortgagors. That blanket commitment would have the inherent tendency, in the context of an affiliate relationship, to cause the bank to relax sound credit judgment concerning the individual loans involved when the affiliate was in need of bank financing, thereby resulting in an inappropriate risk to the soundness of the bank.

(Interprets and applies 12 U.S.C. 371c)

[39 FR 28975, Aug. 13, 1974]

EFFECTIVE DATE NOTE: At 67 FR 76622, Dec. 12, 2002, §250.250 was removed, effective Apr. 1, 2003.

§ 250.260 Miscellaneous interpretations; gold coin and bullion.

The Board has received numerous inquiries from member banks relating to the repeal of the bank on ownership of gold by United States citizens. Listed below are questions and answers which affect member banks and relate to the responsibilities of the Federal Reserve System.

(a) May gold in the form of coins or bullion be counted as vault cash in order to satisfy reserve requirements? No. Section 19(c) of the Federal Reserve Act requires that reserve balances be satisfied either by a balance maintained at the Federal Reserve Bank or by vault cash, consisting of United States currency and coin. Gold in bullion form is not United States currency. Since the bullion value of United States gold coins far exceeds their face value, member banks would not in practice distribute them over the counter at face value to satisfy customer demands.

(b) Will the Federal Reserve Banks perform services for member banks with respect to gold, such as safe-keeping or assaying? No.

(c) Will a Federal Reserve Bank accept gold as collateral for an advance to a member bank under section 10(b) of the Federal Reserve Act? No.

[39 FR 45254, Dec. 31, 1974]

INTERPRETATIONS OF SECTION 32 OF THE GLASS-STEAGALL ACT

§ 250.400 Service of open-end investment company.

An open-end investment company is defined in section 5(a)(1) of the Investment Company Act of 1940 as a company "which is offering for sale or has outstanding any redeemable security of which it is the issuer." Section 2(a)(31) of said act provides that a *redeemable security* means "any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."

It is customary for such companies to have but one class of securities, namely, capital stock, and it is apparent that the more or less continued process of redemption of the stock issued by such a company would restrict and contract its activities if it did not continue to issue its stock. Thus, the issuance and sale of its stock is essential to the maintenance of the company's size and to the continuance of operations without substantial contraction, and therefore the issue and sale of its stock constitutes one of the primary activities of such a company.

Accordingly, it is the opinion of the Board that if such a company is issuing or offering its redeemable stock for sale, it is "primarily engaged in the issue * * * public sale, or distribution, * * * of securities" and that section 32 of the Banking Act of 1933, as amended, prohibits an officer, director or employee of any such company from serving at the same time as an officer, director or employee of any member bank. It is the Board's view that this is true even though the shares are sold to the public through independent organizations with the result that the investment company does not derive any direct profit from the sales.

If, however, the company has ceased to issue or offer any of its stock for sale, the company would not be engaged in the issue or distribution of its stock,