

§ 250.142 Meaning of “obligor or maker” in determining limitation on securities investments by member State banks.

(a) From time to time the New York State Dormitory Authority offers issues of bonds with respect to each of which a different educational institution enters into an agreement to make *rental* payments to the Authority sufficient to cover interest and principal thereon when due. The Board of Governors of the Federal Reserve System has been asked whether a member State bank may invest up to 10 percent of its capital and surplus in each such issue.

(b) Paragraph Seventh of section 5136 of the U.S. Revised Statutes (12 U.S.C. 24) provides that “In no event shall the total amount of the investment securities of any one obligor or maker, held by [a national bank] for its own account, exceed at any time 10 per centum of its capital stock * * * and surplus fund”. That limitation is made applicable to member State banks by the 20th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335).

(c) The Board considers that, within the meaning of these provisions of law, *obligor* does not include any person that acts solely as a conduit for transmission of funds received from another source, irrespective of a promise by such person to pay principal or interest on the obligation. While an obligor does not cease to be such merely because a third person has agreed to pay the obligor amounts sufficient to cover principal and interest on the obligations when due, a person that promises to pay an obligation, but as a practical matter has no resources with which to assume payment of the obligation except the amounts received from such third person, is not an *obligor* within the meaning of section 5136.

(d) Review of the New York Dormitory Authority Act (N.Y. Public Authorities Law sections 1675-1690), the Authority’s interpretation thereof, and materials with respect to the Authority’s “Revenue Bonds, Mills College of Education Issue, Series A” indicates that the Authority is not an *obligor* on those and similar bonds. Although the Authority promises to make all payments of principal and in-

terest, a bank that invests in such bonds cannot be reasonably considered as doing so in reliance on the promise and responsibility of the Authority. Despite the Authority’s obligation to make payments on the bonds, if the particular college fails to perform its agreement to make rental payments to the Authority sufficient to cover all payments of bond principal and interest when due, as a practical matter the sole source of funds for payments to the bondholder is the particular college. The Authority has general borrowing power but no resources from which to assure repayment of any borrowing except from the particular colleges, and rentals received from one college may not be used to service bonds issued for another.

(e) Accordingly, the Board has concluded that each college for which the Authority issues obligations is the sole *obligor* thereon. A member State bank may therefore invest an amount up to 10 percent of its capital and surplus in the bonds of a particular college that are eligible investments under the Investment Securities Regulation of the Comptroller of the Currency (12 CFR Part 1), whether issued directly or indirectly through the Dormitory Authority.

(12 U.S.C. 24, 335)

§ 250.143 Member bank purchase of stock of foreign operations subsidiaries.

(a) In a previous interpretation, the Board determined that a State member bank would not violate the “stock-purchase prohibition” of section 5136 of the Revised Statutes (12 U.S.C. 24 ¶7) by purchasing and holding the shares of a corporation which performs “at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly”.¹ (1968 *Federal Reserve Bulletin*

¹National banking associations are prohibited by section 5136 of the Revised Statutes from purchasing and holding shares of any corporation except those corporations whose shares are specifically made eligible by statute. This prohibition is made applicable to State member banks by section 9 ¶20 of the Federal Reserve Act (12 U.S.C. 335).