

(b) Aggregate limits on insured depository institutions' exposure to other depository institutions

The Board shall, by regulation or order, prescribe standards that have the effect of limiting the risks posed by an insured depository institution's exposure to any other depository institution.

(c) "Exposure" defined

(1) In general

For purposes of subsection (b), an insured depository institution's "exposure" to another depository institution means—

(A) all extensions of credit to the other depository institution, regardless of name or description, including—

(i) all deposits at the other depository institution;

(ii) all purchases of securities or other assets from the other depository institution subject to an agreement to repurchase; and

(iii) all guarantees, acceptances, or letters of credit (including endorsements or standby letters of credit) on behalf of the other depository institution;

(B) all purchases of or investments in securities issued by the other depository institution;

(C) all securities issued by the other depository institution accepted as collateral for an extension of credit to any person; and

(D) all similar transactions that the Board by regulation determines to be exposure for purposes of this section.

(2) Exemptions

The Board may, at its discretion, by regulation or order, exempt transactions from the definition of "exposure" if it finds the exemptions to be in the public interest and consistent with the purpose of this section.

(3) Attribution rule

For purposes of this section, any transaction by an insured depository institution with any person is a transaction with another depository institution to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that other depository institution.

(d) Insured depository institution

For purposes of this section, the term "insured depository institution" has the same meaning as in section 1813 of this title.

(e) Rulemaking authority; enforcement

The Board may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purpose of this section. The appropriate Federal banking agency shall enforce compliance with those regulations under section 1818 of this title.

(Dec. 23, 1913, ch. 6, § 23, as added Pub. L. 102-242, title III, § 308(a), Dec. 19, 1991, 105 Stat. 2362.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 102-242, title III, § 308(c), Dec. 19, 1991, 105 Stat. 2363, provided that: "The amendment made by

this section [enacting this section] shall become effective 1 year after the date of enactment of this Act [Dec. 19, 1991]."

REGULATIONS

Pub. L. 102-242, title III, § 308(b), Dec. 19, 1991, 105 Stat. 2362, provided that: "The Board shall prescribe reasonable transition rules to facilitate compliance with section 23 of the Federal Reserve Act [12 U.S.C. 371b-2] (as added by subsection (a))."

§ 371c. Banking 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.

(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 rela-

tionship 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

(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)(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;

(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 84(b) of this title, with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate;

(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.

(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 1843(k)(4) of this title 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.

(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.

(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.

(d) Exemptions

The provisions of this section, except paragraph (a)(4),¹ 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 1843(c)(1) of this title;

(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 non-recourse 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.

(e) Rules relating to banks with financial subsidiaries

(1) Financial subsidiary defined

For purposes of this section and section 371c-1 of this title, 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 24a of this title.

(2) Financial subsidiary treated as an affiliate

For purposes of applying this section and section 371c-1 of this title, and notwithstanding subsection (b)(2) of this section or section 371c-1(d)(1) of this title, 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.

¹ So in original. Probably should read "subsection (a)(4)".

(3) Anti-evasion provision

For purposes of this section and section 371c-1 of this title—

(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 chapter and the Gramm-Leach-Bliley Act.

(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 November 12, 1999, 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.

(Dec. 23, 1913, ch. 6, §23A, as added June 16, 1933, ch. 89, §13, 48 Stat. 183; amended Aug. 23, 1935, ch. 614, title III, §327, 49 Stat. 717; June 30, 1954, ch. 434, §1, 68 Stat. 358; Pub. L. 86-230, §1(b), Sept. 8, 1959, 73 Stat. 457; Pub. L. 89-485, §§12(a), 13(h), July 1, 1966, 80 Stat. 241, 243; Pub. L. 97-320, title IV, §410(b), Oct. 15, 1982, 96 Stat. 1515; Pub. L. 97-457, §22, Jan. 12, 1983, 96 Stat. 2509; Pub. L. 106-102, title I, §121(b), Nov. 12, 1999, 113 Stat. 1378; Pub. L. 111-203, title VI, §§608(a), 609(a), July 21, 2010, 124 Stat. 1608, 1611.)

Editorial Notes

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (b)(2)(E), probably means the effective date as provided by Pub. L. 97-320, which completely revised this section. Section 410(c) of Pub. L. 97-320 set out as an Effective Date of 1982 Amendment note below, provided that this section shall apply to any transaction entered into after Oct. 15, 1982 with certain exceptions.

The Gramm-Leach-Bliley Act, referred to in subsecs. (b)(11) and (e)(4)(B), is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338. Section 122 of the Act is set out as a note under section 1843 of this title. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

This chapter, referred to in subsec. (e)(4)(B), was in the original “this Act”, meaning act Dec. 23, 1913, ch. 6, 38 Stat. 251, known as the Federal Reserve Act. For complete classification of this act to the Code, see References in Text note set out under section 226 of this title and Tables.

AMENDMENTS

2010—Subsec. (b)(1)(D). Pub. L. 111-203, § 608(a)(1)(A), added subpar. (D) and struck out former subpar. (D) which read as follows:

“(i) any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the member bank or any subsidiary or affiliate of the member bank; or

“(ii) any investment company with respect to which a member bank or any affiliate thereof is an investment advisor as defined in section 80a-2(a)(20) of title 15; and”.

Subsec. (b)(7)(A). Pub. L. 111-203, § 608(a)(1)(B)(i), inserted “, including a purchase of assets subject to an agreement to repurchase” before semicolon at end.

Subsec. (b)(7)(C). Pub. L. 111-203, § 608(a)(1)(B)(ii), struck out “, including assets subject to an agreement to repurchase,” after “purchase of assets”.

Subsec. (b)(7)(D). Pub. L. 111-203, § 608(a)(1)(B)(iii)(I), inserted “or other debt obligations” after “acceptance of securities”.

Subsec. (b)(7)(F), (G). Pub. L. 111-203, § 608(a)(1)(B)(iii)(II), (iv), added subpars. (F) and (G).

Subsec. (c)(1). Pub. L. 111-203, § 608(a)(2)(A)(i), substituted “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” for “subsidiary shall be secured at the time of the transaction” in introductory provisions.

Subsec. (c)(1)(A) to (D). Pub. L. 111-203, § 608(a)(2)(A)(ii), substituted “letter of credit, or credit exposure” for “or letter of credit”.

Subsec. (c)(2). Pub. L. 111-203, § 608(a)(2)(D), inserted “, or credit exposure to an affiliate resulting from a securities borrowing or lending transaction, or derivative transaction” before period at end.

Pub. L. 111-203, § 608(a)(2)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “Any such collateral that is subsequently retired or amortized shall be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the inception of the transaction.”

Subsec. (c)(3). Pub. L. 111-203, § 608(a)(2)(E), inserted “or other debt obligations” after “securities” and substituted “guarantee, acceptance, or letter of credit issued on behalf of, or credit exposure from a securities borrowing or lending transaction, or derivative transaction to,” for “or guarantee, acceptance, or letter of credit issued on behalf of.”

Pub. L. 111-203, § 608(a)(2)(C), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (c)(4), (5). Pub. L. 111-203, § 608(a)(2)(C), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (d)(4). Pub. L. 111-203, § 608(a)(3), substituted “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,” for “or issuing a guarantee, acceptance, or letter of credit on behalf of,” in introductory provisions.

Subsec. (e)(3), (4). Pub. L. 111-203, § 609(a), redesignated par. (4) as (3) and struck out former par. (3). Prior to amendment, text of par. (3) read as follows:

“(A) EXCEPTION FROM LIMIT ON COVERED TRANSACTIONS WITH ANY INDIVIDUAL FINANCIAL SUBSIDIARY.—Notwithstanding paragraph (2), the restriction contained in subsection (a)(1)(A) of this section shall not apply with respect to covered transactions between a bank and any individual financial subsidiary of the bank.

“(B) EXCEPTION FOR EARNINGS RETAINED BY FINANCIAL SUBSIDIARIES.—Notwithstanding paragraph (2) or subsection (b)(7) of this section, a bank’s investment in a financial subsidiary of the bank shall not include retained earnings of the financial subsidiary.”

Subsec. (f)(2). Pub. L. 111-203, § 608(a)(4)(A)(iii), which directed “striking the Board and inserting” subpar. (A)

designation and heading, followed by “The Board”, was executed by inserting subpar. (A) designation and heading before “The Board” as it appeared, to reflect the probable intent of Congress.

Pub. L. 111-203, § 608(a)(4)(A)(ii), substituted “if—” for “if it finds such exemptions to be in the public interest and consistent with the purposes of this section.” and added cls. (i) and (ii).

Pub. L. 111-203, § 608(a)(4)(A)(i), struck out “or order” after “regulation”.

Subsec. (f)(2)(B). Pub. L. 111-203, § 608(a)(4)(A)(iv), added subpar. (B).

Subsec. (f)(4). Pub. L. 111-203, § 608(a)(4)(B), added par. (4).

1999—Subsec. (b)(11). Pub. L. 106-102, § 121(b)(2), added par. (11).

Subsec. (e). Pub. L. 106-102, § 121(b)(1)(B), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106-102, § 121(b)(1)(A), (3), redesignated subsec. (e) as (f) and added par. (3).

1983—Subsec. (d)(1). Pub. L. 97-457, § 22(1), substituted “subject to the prohibition contained in subsection (a)(3)” for “except for the purchase of a low-quality asset which is prohibited”.

Subsec. (d)(6). Pub. L. 97-457, § 22(2), inserted “, subject to the prohibition contained in subsection (a)(3),” after “market quotation or”.

1982—Pub. L. 97-320 amended section generally by substituting provisions in lettered subsections relating to restrictions on transactions with affiliates, collateral for such transactions, exemptions for certain transactions and rulemaking and additional exemptions, for prior undesignated paragraphs which read as follows:

“No member bank shall (1) make any loan or any extension of credit to, or purchase securities under repurchase agreement from, any of its affiliates, or (2) invest any of its funds in the capital stock, bonds, debentures, or other such obligations of any such affiliate, or (3) accept the capital stock, bonds, debentures, or other such obligations of any such affiliate as collateral security for advances made to any person, partnership, association, or corporation, if, in the case of any such affiliate, the aggregate amount of such loans, extensions of credit, repurchase agreements, investments, and advances against such collateral security will exceed 10 per centum of the capital stock and surplus of such member bank, or if, in the case of all such affiliates, the aggregate amount of such loans, extensions of credits, repurchase agreements, investments, and advances against such collateral security will exceed 20 per centum of the capital stock and surplus of such member bank.

“Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of stocks, bonds, debentures, or other such obligations having a market value at the time of making the loan or extension of credit of at least 20 per centum more than the amount of the loan or extension of credit, or of at least 10 per centum more than the amount of the loan or extension of credit if it is secured by obligations of any State or of any political subdivision or agency thereof: *Provided*, That the provisions of this paragraph shall not apply to loans or extensions of credit secured by obligations of the United States Government, the Federal intermediate credit banks, the Federal land banks, or the Federal Home Loan Banks, or by such notes, drafts, bills of exchange, or bankers’ acceptances as are eligible for rediscount or for purchase by Federal Reserve Banks. A loan or extension of credit to a director, officer, clerk, or other employee, or any representative of any such affiliate, shall be deemed a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of or transferred to the affiliate.

“The provisions of this section shall not apply to any affiliate (1) engaged solely in holding the bank premises of the member bank with which it is affiliated; (2) engaged solely in conducting a safe-deposit business or the business of an agricultural credit corporation or livestock loan company; (3) in the capital stock of

which a national banking association is authorized to invest pursuant to section 25 of this Act, as amended [12 U.S.C. 601 et seq.], or a subsidiary of such affiliate, all the stock of which (except qualifying shares of directors in an amount not to exceed 10 per centum) is owned by such affiliate; (4) organized under section 25(a) of this Act, as amended [12 U.S.C. 611 et seq.], of this title, or a subsidiary of such affiliate, all the stock of which (except qualifying shares of directors in an amount not to exceed 10 per centum) is owned by such affiliate; (5) engaged solely in holding obligations of the United States or obligations fully guaranteed by the United States as to principal and interest, the Federal intermediate credit banks, the Federal land banks, the Federal Home Loan Banks; (6) where the affiliate relationship has arisen out of a bona fide debt contracted prior to the date of the creation of such relationship; or (7) where the affiliate relationship exists by reason of the ownership or control of any voting shares thereof by a member bank as executor, administrator, trustee, receiver, agent, depository, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the stockholders of such member bank; but as to any such affiliate, member banks shall continue to be subject to other provisions of law applicable to loans by such banks and investments by such banks in stocks, bonds, debentures, or other such obligations. The provisions of this section shall likewise not apply to indebtedness of any affiliate for unpaid balances due a bank on assets purchased from such bank or to loans secured by, or extensions of credit against, obligations of the United States or obligations fully guaranteed by the United States as to principal and interest.

“For the purposes of this section, (1) the term ‘extension of credit’ and ‘extensions of credit’ shall be deemed to include (A) any purchase of securities, other assets or obligations under repurchase agreement, and (B) the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse, except that the acquisition of such paper by a member bank from another bank, without recourse, shall not be deemed to be a ‘discount’ by such member bank for such other bank; and (2) non-interest-bearing deposits to the credit of a bank shall not be deemed to be a loan or advance or extension of credit to the bank of deposit, nor shall the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business be deemed to be a loan or advance or extension of credit to the depositing bank.

“For the purposes of this section, the term ‘affiliate’ shall include, with respect to any member bank, any bank holding company of which such member bank is a subsidiary within the meaning of the Bank Holding Company Act of 1956, as amended [12 U.S.C. 1841 et seq.], and any other subsidiary of such company.

“The provisions of this section shall not apply to (1) stock, bonds, debentures, or other obligations of any company of the kinds described in section 4(c)(1) of the Bank Holding Company Act of 1956, as amended [12 U.S.C. 1843(c)(1)]; (2) stock, bonds, debentures, or other obligations accepted as security for debts previously contracted, provided that such collateral shall not be held for a period of over two years; (3) shares which are of the kinds and amounts eligible for investment by national banks under the provisions of section 24 of this title; (4) any extension of credit by a member bank to a bank holding company of which such bank is a subsidiary or to another subsidiary of such bank holding company, if made within one year after July 1, 1966, and pursuant to a contract lawfully entered into prior to January 1, 1966; or (5) any transaction by a member bank with another bank the deposits of which are insured by the Federal Deposit Insurance Corporation, if more than 50 per centum of the voting stock of such other bank is owned by the member bank or held by trustees for the benefit of the shareholders of the member bank.”

1966—Pub. L. 89-485 added last three pars. and struck out from third par. introductory statement that term

“affiliate” shall include holding company affiliates as well as other affiliates, respectively. Such added pars. make “extension of credit” cover all purchases under repurchase agreements and the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse, excluding therefrom such discounts by one bank for another, if without recourse, exclude from being deemed a loan, advance, or extension of credit noninterest bearing deposits to the credit of a bank or the giving of immediate credit to a bank for uncollected items received in the ordinary course of business, define term “affiliate” (superseding one stricken from par. three), and exempt stocks, bonds, debentures, or other obligations of companies described in section 4(c)(1) of the Bank Holding Company Act of 1956, as amended; or accepted as security for debts previously contracted, shares of the kind and amounts eligible for investment by national banks under section 24 of this title, loans by a bank to its holding company or a fellow subsidiary if made within one year after July 1, 1966 and pursuant to a contract lawfully entered before Jan. 1, 1966, and transactions between a member bank and a majority-owned insured bank.

1959—Pub. L. 86-230 struck out from second and third pars. references to Home Owners’ Loan Corporation after Federal Home Loan Banks.

1954—Act June 30, 1954, amended third par. substituting “solely” for “on June 16, 1934” after “(1) engaged” and struck out “or in maintaining and operating properties acquired for banking purposes prior to such date” after “is affiliated”.

1935—Act Aug. 23, 1935, amended third par.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title VI, §608(d), July 21, 2010, 124 Stat. 1611, provided that: “The amendments made by this section [amending this section and sections 371c-1 and 1468 of this title] shall take effect 1 year after the transfer date.”

[For definition of “transfer date” as used in section 608(d) of Pub. L. 111-203, set out above, see section 5301 of this title.]

Pub. L. 111-203, title VI, §609(b), (c), July 21, 2010, 124 Stat. 1611, provided that:

“(b) PROSPECTIVE APPLICATION OF AMENDMENT.—The amendments made by this section [amending this section] shall apply with respect to any covered transaction between a bank and a subsidiary of the bank, as those terms are defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), that is entered into on or after the date of enactment of this Act [July 21, 2010].

“(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.”

[For definition of “transfer date” as used in section 609(b), (c) of Pub. L. 111-203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-320, title IV, §410(c), Oct. 15, 1982, 96 Stat. 1520, provided that: “Section 23A of the Federal Reserve Act, as amended by this section [this section], shall apply to any transaction entered into after the date of enactment of this Act [Oct. 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 [see section 1 of Pub. L. 97-320, set out as a Short Title of 1982 Amendments note under section 226 of this title], 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.”

§ 371c-1. 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.

(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 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.

(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) Exception

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) Definitions

For the purpose of this subsection—

(A) the term “security” has the meaning given to such term in section 78c(a)(10) of title 15; 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.

(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 371c of this title (but does not include any company described in section¹ (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 371c of this title; and

(3) the term “covered transaction” has the meaning given to such term in section 371c of this title (but does not include any transaction which is exempt from such definition under subsection (d) of such section).

(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.

¹ So in original. Probably should be “subsection”.