FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R-1330]

Transactions Between Member Banks and Their Affiliates: Exemption for Certain Securities Financing Transactions Between a Member Bank and an Affiliate

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Interim final rule with request for public comment.

SUMMARY: In light of the continuing unusual and exigent circumstances in the financial markets, the Board has adopted, on an interim final basis, a regulatory exemption for member banks from certain provisions of section 23A of the Federal Reserve Act and the Board's Regulation W. The exemption increases the capacity of member banks, subject to certain conditions designed to help ensure the safety and soundness of the banks, to enter into securities financing transactions with affiliates.

DATE: The exemption became effective on September 14, 2008. Comments must be received on or before October 31, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R-1330, by any of the following methods:

Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

Fax: (202) 452-3819 or (202) 452-3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Assistant General Counsel, (202) 452-2263, Legal Division, or Norah M. Barger, Deputy Director, (202) 452-2402, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263-4869.

SUPPLEMENTARY INFORMATION:

In light of the ongoing dislocations in the financial markets, and the potential impact of such dislocations on the functioning of the U.S. tri-party repurchase agreement market, the Board has adopted on an interim basis the following exemption from section 23A of the Federal Reserve Act (12 U.S.C. § 371c) and the Board's Regulation W (12 CFR part 223). The exemption will facilitate the ability of an affiliate of a member bank (such as an SEC-registered broker-dealer) to obtain financing, if needed, for

securities or other assets that the affiliate ordinarily would have financed through the U.S. tri-party repurchase agreement market. The exemption is subject to several conditions designed to protect the safety and soundness of the member bank.

First, the member bank may use the exemption to finance only those asset types that the affiliate currently finances in the U.S. tri-party repurchase agreement market.

Second, the transactions must be marked to market daily and subject to daily margin maintenance requirements, and the member bank must be at least as over-collateralized in its securities financing transactions with the affiliate as the affiliate's clearing bank was in its U.S. tri-party repurchase agreement transactions with the affiliate on September 12, 2008. The Board expects the member bank and its affiliate to use standard industry documentation for the exempt securities financing transactions (which would, among other things, qualify the transactions as securities contracts or repurchase agreements for purposes of U.S. bankruptcy law).

Third, to ensure that member banks use the exemption in a manner consistent with its purpose – that is, to help provide liquidity to the U.S. tri-party repurchase agreement market – the aggregate risk profile of the exempt securities financing transactions must be no greater than the aggregate risk profile of the affiliate's U.S. tri-party repurchase agreement transactions on September 12, 2008. The exemption, therefore, permits an affiliate to obtain financing from its affiliated member bank for securities positions that the affiliate did not own or finance in the U.S. tri-party repurchase agreement market on September 12, 2008, but only if the new positions in the aggregate do not increase the overall risk profile of the affiliate's portfolio.

Fourth, the member bank's top-tier holding company must guarantee the obligations of the affiliate under the securities financing transactions (or must provide other security to the bank that is acceptable to the Board). Any member bank that intends to use a form of credit enhancement other than a parent company guarantee must consult in advance with Board staff. An example of the type of other security arrangement that may be acceptable to the Board would be a pledge by the affiliate or parent holding company to the member bank of a sufficient amount of additional liquid, high-quality collateral.

Fifth, a member bank may use the exemption only if the bank has not been specifically informed by the Board, after consultation with the bank's appropriate Federal banking agency, that the bank may not use this exemption. If the Board believes, after such consultation, that the exempt securities financing transactions pose an unacceptable level of risk to the bank, the Board may withdraw the exemption for the bank or may impose supplemental conditions on the bank's use of the exemption.

Consistent with its purpose to ameliorate potential temporary dislocations in the U.S. tri-party repurchase agreement market, the exemption will expire on January 30, 2009, unless extended by the Board.

The Board notes that any securities financing transactions between the member bank and an affiliate are subject to the market terms requirement of section 23B of the Federal Reserve Act (12 U.S.C. § 371c-1). Section 23B requires that financial transactions between a bank and its affiliate be on terms and under circumstances (including credit standards) that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with or involving nonaffiliates. Among other things, section 23B would require the member

bank to apply collateral haircuts to its affiliated securities financing transaction counterparty that are at least as strict as the bank would apply to comparable unaffiliated securities financing transaction counterparties.

Administrative Procedure Act

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. §§ 553(b) and (d)), the Board finds that there is good cause for making the exemption effective immediately on September 14, 2008, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity to comment before the effective date. The Board has adopted the exemption in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The exemption will provide immediate relief to participants in the U.S. tri-party repurchase agreement market affected by the current turmoil. The Board is soliciting comment on all aspects of the exemption and will make such changes that it considers to be appropriate or necessary after review of any comments received.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. § 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b).

Pursuant to section 605(b), the Board certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule reduces regulatory burden on large and small

insured depository institutions by granting an exemption from the Federal transactions with affiliates regime for insured depository institutions that engage in securities financing transactions with affiliates.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. § 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the interim final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules. In light of this requirement, the Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comment on whether the Board could take additional steps to make the rule easier to understand.

List of Subjects in 12 CFR Part 223

Banks, Banking, Federal Reserve System.

Authority and Issuance

For the reasons set forth in the preamble, Chapter II of Title 12 of the Code of Federal Regulations is amended as follows:

PART 223 -- TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

1. The authority citation for part 223 continues to read as follows:

Authority: 12 U.S.C. 371c and 371c-1.

2. In section 223.42, add section 223.42(n):

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

* * * * *

(n) Securities financing transactions. (1) From September 15, 2008, until January 30, 2009 (unless further extended by the Board), securities financing transactions with an affiliate, if:

(i) The security or other asset financed by the member bank in the transaction is of a type that the affiliate financed in the U.S. tri-party repurchase agreement market at any time during the week of September 8-12, 2008;

(ii) The transaction is marked to market daily and subject to daily margin-maintenance requirements, and the member bank is at least as over-collateralized in the transaction as the affiliate's clearing bank was over-collateralized in comparable transactions with the affiliate in the U.S. tri-party repurchase agreement market on September 12, 2008;

(iii) The aggregate risk profile of the securities financing transactions under this exemption is no greater than the aggregate risk profile of the securities financing transactions of the affiliate in the U.S. tri-party repurchase agreement market on September 12, 2008;

(iv) The member bank's top-tier holding company guarantees the obligations of the affiliate under the securities financing transactions (or provides other security to the bank that is acceptable to the Board); and

(v) The member bank has not been specifically informed by the Board, after consultation with the member bank's appropriate Federal banking agency, that the member bank may not use this exemption.

(2) For purposes of this exemption:

(i) Securities financing transaction means:

(A) A purchase by a member bank from an affiliate of a security or other asset, subject to an agreement by the affiliate to repurchase the asset from the member bank;

(B) A borrowing of a security by a member bank from an affiliate on a collateralized basis; or

(C) A secured extension of credit by a member bank to an affiliate.

(ii) U.S. tri-party repurchase agreement market means the U.S. market for securities financing transactions in which the counterparties use custodial arrangements provided by JPMorgan Chase Bank or Bank of New York or another financial institution approved by the Board.

By order of the Board of Governors of the Federal Reserve System, September 14, 2008.

Jennifer J. Johnson,
Secretary of the Board.
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