



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

October 29, 2008

John David Wright, Esq.
Assistant General Counsel
Wells Fargo Bank, N.A.
Law Department
MAC A0194-274
45 Fremont Street, 27th Floor
San Francisco, California 94105

Dear Mr. Wright:

This is in response to the request by Wells Fargo & Company (“Wells Fargo”) on behalf of its subsidiary bank, Wells Fargo Bank, National Association (“Bank”), Sioux Falls, South Dakota, for an exemption from section 23A of the Federal Reserve Act and the Board’s Regulation W¹ to permit Bank to purchase approximately [] of assets and loan commitments (together “Assets”) from four nonbank affiliates in connection with the proposed reorganization of these affiliates into Bank: The Foothill Group, Inc. and Wells Fargo Foothill, Inc., both of Santa Monica, California; Wells Fargo Trade Capital, Inc., New York, New York; and Wells Fargo Retail Finance II, LLC, Boston, Massachusetts (collectively, “the Foothill Affiliates”).

Section 23A and Regulation W limit the amount of “covered transactions” between a bank and any single affiliate to 10 percent of the bank’s capital stock and surplus and limit the amount of covered transactions between a bank and all its affiliates to 20 percent of the bank’s capital stock and surplus. “Covered transactions” include a bank’s purchase of assets from an affiliate and a bank’s extension of credit to an affiliate. The statute and regulation also require a bank to secure its extensions of credit to, and certain other covered transactions with, affiliates with prescribed amounts of collateral. In addition, section 23A and Regulation W prohibit a bank from purchasing low-quality assets from an affiliate.

As noted, the Foothill Affiliates are currently affiliates of Bank. Bank’s purchase of Assets from the Foothill Affiliates would be a “covered transaction” under Regulation W² and subject to the quantitative and qualitative limits of section 23A and Regulation W. The value of the covered transaction under Regulation W would be

¹ 12 U.S.C. § 371c; 12 CFR part 223.

² See 12 U.S.C. § 371c(b)(7)(C); 12 CFR 223.3(h)(3).

approximately [].³ Because the capital stock and surplus of Bank at the time of the contribution would be approximately \$44.5 billion, Bank's quantitative limit per affiliate is approximately \$4.4 billion, and the proposed covered transaction would exceed Bank's quantitative limits under section 23A and Regulation W. Accordingly, Bank has requested an exemption from section 23A and Regulation W to permit it to accomplish the reorganization.

Section 23A and Regulation W specifically authorize the Board to exempt, in its discretion, transactions or relationships from the requirements of the statute and rule if the Board finds such exemptions to be in the public interest and consistent with the purposes of section 23A.⁴

The Board has approved exemptions under section 23A for one-time asset transfers that are part of a corporate reorganization and that are structured to ensure the quality of the transferred assets. As in previous cases reviewed by the Board, the proposed transaction in this case is a byproduct of a one-time corporate reorganization. The sale of Assets to Bank is part of a larger reorganization of Wells Fargo's asset-based and related commercial lending business into Bank. According to Wells Fargo, this exemption is in the public interest because the reorganization is expected to enhance the efficiency of the lending programs of Wells Fargo and to allow borrowers served by the Foothill Affiliates to continue to obtain appropriately priced credit.

In addition, Wells Fargo has made the following commitments as part of its exemption request:

1. Following the purchase of Assets from the Foothill Affiliates, Wells Fargo will make either (i) a cash payment to Bank equal to the book value at the end of each calendar quarter, plus write-downs during that quarter by Bank, of any transferred assets or any outstanding assets created pursuant to the transferred commitments that became low-quality assets during that quarter or (ii) quarterly purchases from Bank (or its operating subsidiaries) of any transferred assets or any outstanding assets created pursuant to the transferred commitments that became low-quality assets during that quarter at a price equal to the book value at the end of that quarter plus previous write-downs by Bank of any such assets. Wells Fargo will make the cash payment or will purchase the assets within 30 days after the end of each calendar quarter.

³ See 12 CFR 223.31(b).

⁴ 12 U.S.C. § 371c(f)(2); 12 CFR 223.43(a).

2. Bank will hold an amount of risk-based capital equal to the book value of any transferred assets or any outstanding assets created pursuant to the transferred commitments that become low-quality assets so long as Bank (or any operating subsidiary) retains ownership or control of such assets. For example, under this dollar-for-dollar capital requirement, the risk-based capital charge for each transferred asset that becomes a low-quality asset would be 100 percent (equivalent to a 1250 percent risk weight), rather than the 8 percent requirement (equivalent to a 100 percent risk weight) that would apply to a similar defaulted loan asset that is not a part of the transferred asset pool.

The foregoing commitments will expire as to each Asset on the maturity date of the credit agreement relating to the Asset as of the transfer date, as set forth on the asset schedule that was previously submitted to the Board. These commitments are similar to commitments relied on by the Board in previous internal corporate reorganizations. These commitments have been modified, however, to clarify that the funds transferred by Wells Fargo to Bank to support any of the Assets that become low-quality assets will provide a cushion of additional capital in excess of Bank's required regulatory capital. The commitments ensure that these funds will remain available to Bank and will not be returned to Wells Fargo through a dividend or a return of capital.⁵ In addition, a majority of Bank's directors has reviewed and approved the transaction.

Both Wells Fargo and Bank are well capitalized and well managed and would remain so after the transaction. As a condition of this exemption, Bank must remain well capitalized based on the risk-based capital guidelines of the Office of the Comptroller of the Currency ("OCC") and the modifications to those guidelines described in the commitment above. In addition, at the request of the Federal Deposit Insurance Corporation ("FDIC"), Wells Fargo and Bank also have committed that all loan commitments transferred to Bank (or operating subsidiaries of Bank) in connection with the transactions covered by the requested exemption will be supported by an internal credit assessment by Bank (or an operating subsidiary of Bank) performed within 90 days prior to the transfer date. The OCC and the FDIC have reviewed the transaction and informed the Board that they have no objection to the proposal, subject to the conditions discussed above.

In light of these considerations and all the facts presented, the reorganization transaction appears to be consistent with safe and sound banking practices and on terms that would ensure the quality of the assets transferred. Accordingly, the transaction appears to be consistent with the purposes of section 23A, and the Director of the Division of Banking Supervision and Regulation, pursuant to authority delegated by

⁵ Board letter dated December 21, 2007, to Andres Navarette, Esq. (Capital One Financial Corporation).

the Board, and with the concurrence of the General Counsel, hereby grants the requested exemption.

This determination is specifically conditioned on compliance by Wells Fargo and Bank with all the commitments and representations made in connection with the exemption request. These commitments and representations are deemed to be conditions imposed in writing in connection with granting the exemption and, as such, may be enforced in proceedings under applicable law. This determination is based on the specific facts and circumstances of the proposed transaction and may be revoked if a material change in those facts and circumstances occurs or if Wells Fargo or Bank fails to observe its commitments or representations. Granting this exemption does not represent a determination concerning the permissibility of any other transactions engaged in by Wells Fargo or Bank that are subject to section 23A or Regulation W.

Sincerely yours,

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

cc: Federal Reserve Bank of San Francisco
Federal Deposit Insurance Corporation
Office of Comptroller of the Currency