



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

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

November 20, 2008

John David Wright, Esq.  
Chief Regulatory Counsel  
Wells Fargo Bank, N.A.  
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 Bank, National Association (“WF Bank”), Sioux Falls, South Dakota, for a temporary exemption from section 23A of the Federal Reserve Act and the Board’s Regulation W<sup>1</sup> to allow WF Bank to extend credit to its affiliate, Wachovia Bank, National Association (“Wachovia Bank”), Charlotte, North Carolina, as described below.

On October 3, 2008, Wells Fargo & Company (“WFC”), San Francisco, California, entered into an agreement to acquire Wachovia Corporation (“Wachovia”), Charlotte.<sup>2</sup> On October 20, Wachovia Bank became an affiliate of WF Bank for purposes of section 23A and Regulation W by virtue of WFC’s acquisition of approximately 39.9 percent of the voting stock of Wachovia. WF Bank proposes to extend up to \$17 billion to Wachovia Bank to meet Wachovia Bank’s anticipated funding needs during the transition period until WFC acquires the remainder of Wachovia. When WFC completes this acquisition, Wachovia Bank will become a “sister bank” of WF Bank, and transactions

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<sup>1</sup> 12 U.S.C. § 371c; 12 CFR part 223.

<sup>2</sup> This transaction was approved by Board order dated October 12, 2008, and statement on the approval dated October 21. This letter confirms the exemption granted to WF Bank on October 22.

between the banks will be exempt by statute from the quantitative limits and collateral requirements of section 23A and Regulation W.<sup>3</sup>

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.<sup>4</sup> “Covered transactions” include a purchase of assets by a bank from an affiliate, a loan or extension of credit by a bank to an affiliate, an issuance of a guarantee by a bank on behalf of an affiliate, and certain other transactions.<sup>5</sup> In addition, the statute and regulation require a bank to secure its extensions of credit to, and guarantees on behalf of, affiliates with prescribed amounts of collateral.<sup>6</sup>

Moreover, section 23A and Regulation W specifically authorize the Board to exempt transactions or relationships from the requirements of the statute and rule if the Board finds such an exemption to be in the public interest and consistent with the purposes of section 23A.<sup>7</sup> The Board previously has indicated that the twin purposes of section 23A are (i) to protect against a depository institution suffering losses in transactions with affiliates and (ii) to limit the ability of a depository institution to transfer to its affiliates the subsidy arising from the institution’s access to the federal safety net.<sup>8</sup>

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<sup>3</sup> Because WFC controls more than 25 percent of Wachovia, Wachovia and its subsidiaries are affiliates of WF Bank for purposes of section 23A. 12 CFR 223.2(a). Transactions between two insured depository institutions are exempt from the quantitative limits and collateral requirements of Regulation W, however, if the same company controls 80 percent or more of the voting securities of each institution. 12 CFR 223.41(b). When WFC acquires the remainder of Wachovia, it will control more than 80 percent of the voting securities of WF Bank and Wachovia Bank, and covered transactions between the two banks will be eligible for this exemption.

<sup>4</sup> 12 U.S.C. § 371c(a)(1); 12 CFR 223.11 and 223.12.

<sup>5</sup> 12 U.S.C. § 371c(b)(7); 12 CFR 223.3(h).

<sup>6</sup> 12 U.S.C. § 371c(c); 12 CFR 223.14.

<sup>7</sup> 12 U.S.C. § 371c(f)(2); 12 CFR 223.43.

<sup>8</sup> 67 Federal Register 76560 (Dec. 12, 2002).

The extensions of credit by WF Bank to Wachovia Bank would be covered transactions under section 23A and Regulation W. Because WF Bank proposes to extend credit to Wachovia Bank in amounts that exceed its quantitative limits under the statute and rule, WF Bank's proposal requires an exemption from the Board.

The Board believes that a temporary, conditional exemption from section 23A and Regulation W for the proposed extensions of credit would be consistent with the purposes of section 23A and in the public interest. Importantly, the proposed covered transactions are between two insured depository institutions, and WF Bank has agreed to several conditions that will help ensure that they are conducted in a safe and sound manner. First, WF Bank will limit its extensions of credit to Wachovia Bank under this exemption to \$17 billion, which constitutes less than 40 percent of WF Bank's capital stock and surplus. In addition, the extensions of credit will be fully secured by collateral with a current market value of at least 200 percent of the amount of the extensions of credit. The collateral will consist of a designated pool of first-lien auto loans, first-lien residential mortgage loans, and municipal securities. No low-quality assets (as defined in Regulation W) will serve as collateral for the extensions of credit. WF Bank also will mark to market the extensions of credit daily, and the extensions of credit will be subject to daily margin maintenance requirements. Moreover, WFC will reimburse WF Bank promptly for any losses sustained by the bank in connection with the extensions of credit. WF Bank and WFC also must remain "well capitalized" as defined in the Office of the Comptroller of the Currency's prompt corrective action regulation and the Board's Regulation Y.<sup>9</sup> The exemption will expire when WFC acquires the remainder of Wachovia.

Given the fragility in the financial markets and the benefits to financial stability of allowing WF Bank to provide liquidity to Wachovia Bank on a transitional basis, granting the exemption would have significant public benefits. For the reasons stated above, and in light of all the facts presented, the proposed extensions of credit appear to be consistent with the purposes of section 23A and in the public interest. Accordingly, the Board has granted the requested temporary exemption, subject to the conditions and limits discussed above.

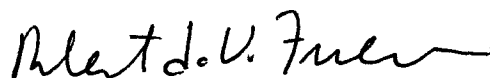
This determination is specifically conditioned on compliance by WFC and WF Bank with all the commitments and representations they made to the Board in connection with the exemption request. These commitments and

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<sup>9</sup> See 12 CFR 6.4 and 12 CFR 225.2(r).

representations are deemed to be conditions imposed in writing by the Board in connection with granting the request and, as such, may be enforced in proceedings under applicable law. This determination is based on the specific facts and circumstances of the transactions described in your correspondence and this letter. Any material change in those facts or circumstances, or any failure by WFC or WF Bank to observe any of its commitments or representations, may result in a different determination or in a revocation of the exemption.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert deV. Frierson", with a long horizontal flourish extending to the right.

Robert deV. Frierson  
Deputy Secretary of the Board

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