

# Federal Reserve Act

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## Section 23A. Relations with 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 relationship 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 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), 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 4(k)(4) of the Bank Holding Company Act of 1956 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), 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 4(c)(1) of the Bank Holding Company Act of 1956;
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 nonrecourse 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 23B, 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 5136A of the Revised Statutes of the United States.
2. Financial Subsidiary Treated As An Affiliate. For purposes of applying this section and section 23B, and notwithstanding subsection (b)(2) of this section or section 23B(d)(1), 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.
3. Anti-Evasion Provision. For purposes of this section and section 23B--
  - 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 Act 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 the date of the enactment of the Gramm-Leach-Bliley Act, 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.

[12 USC 371c. As added by act of June 16, 1933 (48 Stat. 183) and amended by acts of Aug. 23, 1935 (49 Stat. 717); June 30, 1954 (68 Stat. 358); Sept. 8, 1959 (73 Stat. 457); July 1, 1966 (80 Stat. 241, 243); Oct. 15, 1982 (96 Stat. 1515); Jan. 12, 1983 (96 Stat. 2509); Nov. 12, 1999 (113 Stat. 1378, 1379, 1380); and July 21, 2010 (124 Stat. 1608, 1611). Section 410 of the Garn-St Germain Depository Institutions Act of 1982, which completely revised this section, provides in paragraph (c) (12 USC 371c note) the following:

(c) Section 23A of the Federal Reserve Act, as amended by this section, shall apply to any transaction entered into after the date of enactment of this Act [October 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, 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.]

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