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FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R-1331]

Transactions Between Member Banks and Their Affiliates: Exemption
for Certain Purchases of Asset-Backed Commercial Paper by a Member Bank
From an Affiliate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: To reduce liquidity and other strains being experienced by money market mutual funds, the Board of Governors of the Federal Reserve System (Board) adopted on September 19, 2008, the Asset-Backed Commercial Paper Money Market Mutual Fund Lending Facility (AMLF), that enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a non-recourse basis if they use the proceeds of the loan to purchase certain types of asset-backed commercial paper (ABCP) from money market mutual funds. To facilitate use of the AMLF by member banks, the Board also has adopted regulatory exemptions for member banks from certain provisions of sections 23A and 23B of the Federal Reserve Act and the Board's Regulation W. The exemptions increase the capacity of a member bank to purchase ABCP from affiliated money market mutual funds in connection with the AMLF.

DATES: Effective January 30, 2009.

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SUPPLEMENTARY INFORMATION:

In light of the ongoing dislocations in the financial markets, and the impact of such dislocations on the functioning of the ABCP markets and on the operations of money market mutual funds, the Board adopted the AMLF on September

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19, 2008. Under the facility, depository institutions and bank holding companies (banking organizations) are able to borrow from the Federal

Reserve Bank of Boston on a non-recourse basis on condition that the organizations use the proceeds of the Federal Reserve credit to purchase, at amortized cost, certain highly rated U.S. dollar-denominated ABCP from money market mutual funds. The ABCP purchased must be used to secure the borrowing from the Reserve Bank. The purpose of the AMLF is to assist money market mutual funds to obtain liquidity by enabling them to sell some of their high-credit-quality secured assets at amortized cost. The AMLF, which was initially scheduled to expire on January 31, 2009, has been extended to April 30, 2009.\1\

\1\ Board of Governors of the Federal Reserve System (2008), ``Federal Reserve announces the extension of three liquidity facilities through April 30, 2009,`` press release, December 2, 2008.

To facilitate usage of the AMLF, on September 19, 2008, the Board adopted on an interim basis, and requested public comment on, exemptions from sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1) and the Board's Regulation W (12 CFR part 223).\2\ The exemptions were designed to increase the capacity of a member bank to purchase ABCP from an affiliated money market mutual fund in connection with the AMLF. Under the final rule, a member bank may use the exemptions 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 these exemptions. If the Board believes, after such consultation, that use of the exemptions would not be appropriate for the member bank, the Board may withdraw the exemptions for the bank or may impose supplemental conditions on the bank's use of the exemptions.

\2\ 73 FR 55708.

After considering the comments, the Board has adopted a final rule that is largely identical to the interim final rule but includes minor changes to reflect the extended duration of the AMLF. The interim final rule provided that the exemptions applied only to purchases of ABCP from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7) between September 19, 2008, and January 30, 2009. This timeframe coincided with the dates of the AMLF. In the final rule, the date range for eligible ABCP purchases has been eliminated, but the rule continues to provide that the exemptions are available only for purchases of ABCP where the ABCP is used to secure borrowing from the AMLF. As a result, the exemptions effectively will no longer be available once the AMLF expires.

The Board has determined that these exemptions are in the public interest and consistent with the purposes of sections 23A and 23B. The substantial protections provided to intermediaries by the Federal Reserve in connection with the AMLF largely mitigate the safety-and-soundness concerns that sections 23A and 23B were designed to address. Because Federal Reserve extensions of credit to a member bank under the AMLF are on a non-recourse basis, the bank should bear no risk of loss from purchases of ABCP under the facility. Therefore, the Board believes that it is appropriate to exempt a member bank that serves as an intermediary in the AMLF from the requirements of sections 23A and 23B and Regulation W.

Administrative Procedure Act

Pursuant to sections 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), the Board finds that there is good cause for making the rule effective immediately on January 30, 2009. The Board has adopted the rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The rule will provide immediate relief to depository institutions that elect to participate in the ABCP Lending Facility.

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 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 exemptions from the Federal transactions with affiliates regime for insured depository institutions that purchase ABCP from affiliated money market mutual funds pursuant to the AMLF.

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 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 final rule in a simple and straightforward manner. The Board invited comment on whether it could take additional steps to make the rule easier to understand. The Board received no comments on this subject.

List of Subjects in 12 CFR Part 223

Banks, Banking, Federal Reserve System.

Authority and Issuance

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

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

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

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

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2. In Sec. 223.42, revise paragraph (o) to read as follows:

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

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(o) Purchases of certain asset-backed commercial paper. Purchases of asset-backed commercial paper from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7), if the member bank:

(1) Purchases the asset-backed commercial paper on or after September 19, 2008;

(2) Pledges the asset-backed commercial paper to a Federal Reserve Bank to secure financing from the asset-backed commercial paper lending facility (AMLF) established by the Board on September 19, 2008; and

(3) Has not been specifically informed by the Board, after consultation with the member bank's appropriate Federal

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banking agency, that the member bank may not use this exemption.

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3. Revise Sec. 223.56 to read as follows:

Sec. 223.56 What transactions are exempt from the market-terms requirement of section 23B?

The following transactions are exempt from the market-terms requirement of Sec. 223.51.

(a) Purchases of certain asset-backed commercial paper. Purchases of asset-backed commercial paper from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a-7 (17 CFR 270.2a-7), if the member bank:

(1) Purchases the asset-backed commercial paper on or after September 19, 2008;

(2) Pledges the asset-backed commercial paper to a Federal Reserve Bank to secure financing from the asset-backed commercial paper lending facility (AMLF) established by the Board on September 19, 2008; and

(3) 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.

(b) [Reserved].

By order of the Board of Governors of the Federal Reserve System, January 30, 2009.

Jennifer J. Johnson,
Secretary of the Board.

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