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agency of a foreign bank may not purchase assets from, or sell assets to any U.S. affiliates of the foreign bank or to any other U.S. branch or agency of the same foreign bank.[2] (This would not pevent an IBF from purchasing (or selling) assets directly from (or to) any IBF, including an IBF of an affiliate, or to the institution establishing the IBF; such purchases from the institution establishing the IBF would continue to be subject to Eurocurrency reserve requirements except during the initial four-week transition period.) Since repurchase agreements are regarded as loans, transactions involving repurchase agreements are permitted only with customers who are otherwise eligible to deal with IBFs, as specified in Regulation D.

(c) In the case of purchases of assets, in order to determine that the Board's use-of-proceeds requirement has been met, it is necessary for the IBF (1) to ascertain that the applicable IBF notices and acknowledgments have been provided, or (2) in the case of loans or securities, to review the documentation underlying the loan or security, or accompanying the security (e.g., the prospectus or offering statement), to determine that the proceeds are being used only to finance the obligor's operations outside the U.S., or (3) in the case of loans, to obtain a statement from either the seller or borrower that the proceeds are being used only to finance operations outside the U.S., or in the case of securities, to obtain such a statement from the obligor, or (4) in the case of bankers' acceptances, to review the underlying documentation to determine that the proceeds are being used only to finance the parties' operations outside the United States.

(d) Under the Board's regulations, IBFs are not permitted to issue negotiable Euro-CDs, bankers' acceptances, or similar instruments. Accordingly, consistent with the Board's intent in this area, IBFs may sell such instruments issued by third parties that qualify as IBF-eligible assets provided that the IBF, its establishing institution and any affiliate of the institution establishing the IBF do not endorse, accept, or otherwise guarantee the instrument.

[46 FR 62812, Dec. 29, 1981, as amended at 52 FR 47694, Dec. 16, 1987]

§ 204.123 Sale of Federal funds by investment companies or trusts in which the entire beneficial interest is held exclusively by depository institutions.

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96–221) imposes Federal Reserve requirements on transaction accounts and nonpersonnel time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit. Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of *deposit* those obligations of a depository institution that are issued or undertaken and held for the account of a domestic office of another depository institution (12 CFR 204.2(a)(1)(vii)(A)(1)). These exemptions from the definition of *deposit* are known collectively as the *Federal funds* or *interbank* exemption.

(b) Title IV of the Depository Institutions Deregulation and Monetary Control Act of 1980 authorizes Federal savings and loan associations to invest in open-ended management investment companies provided the funds' investment portfolios are limited to the types of investments that a Federal savings and loan association could hold without limit as to percentage of assets (12 U.S.C. 1464(c)(1)(Q)). Such investments include mortgages, U.S. Government and agency securities, securities of states and political subdivisions, sales of Federal funds and deposits held at banks insured by the Federal Deposit Insurance Corporation. The Federal Credit Union Act authorizes Federal credit unions to aggregate their funds in trusts provided the trust is limited to such investments that Federal credit unions could otherwise make. Such investments include loans to credit union members, obligations of the U.S. government or secured by the U.S. government, loans to other credit unions, shares or accounts held at savings and loan associations or mutual savings banks insured by FSLIC or

FDIC, sales of Federal funds and shares of any central credit union whose investments are specifically authorized by the board of directors of the Federal credit union making the investment (12 U.S.C. 1757(7)).

(c) The Board has considered whether an investment company or trust whose entire beneficial interest is held by depository institutions, as defined in Regulation D, would be eligible for the Federal funds exemption from Reserve requirements and interest rate limitations. The Board has determined that such investment companies or trusts are eligible to participate in the Federal funds market because, in effect, they act as mere conduits for the holders of their beneficial interest. To be regarded by the Board as acting as a conduit and, thus, be eligible for participation in the Federal funds market, an investment company or trust must meet each of the following conditions:

(1) The entire beneficial interest in the investment company or trust must be held by depository institutions, as defined in Regulation D. These institutions presently may participate directly in the Federal funds market. If the entire beneficial interest in the investment company or trust is held only by depository institutions, the Board will regard the investment company or trust as a mere conduit for the holders of its beneficial interest.

(2) The assets of the investment company or trust must be limited to investments that *all* of the holders of the beneficial interest could make directly without limit.

(3) Holders of the beneficial interest in the investment company or trust must not be allowed to make third party payments from their accounts with the investment company or trust. The Board does not regard an investment company or trust that offers third party payment capabilities or other similar services which actively transform the nature of the funds passing between the holders of the beneficial interest and the Federal funds market as mere conduits.

The Board expects that the above conditions will be included in materials filed by an investment company or trust with the appropriate regulatory agencies.

(d) The Board believes that permitting sales of Federal funds by investment companies or trusts whose beneficial interests are held exclusively by depository institutions, that invest solely in assets that the holders of their beneficial interests can otherwise invest in without limit, and do not provide third party payment capabilities offer the potential for an increased yield for thrifts. This is consistent with Congressional intent to provide thrifts with convenient liquidity vehicles.

[47 FR 8987, Mar. 3, 1982, as amended at 52 FR 47695, Dec. 16, 1987]

§ 204.124 Repurchase agreement involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities.

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (title I of Pub. L. 96–221) imposes Federal reserve requirements on transaction accounts and nonpersonal time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit (12 U.S.C. 461). Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of *deposit* those obligations of a depository institution that arise from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States government or any agency thereof that the depository institution is obligated to repurchase (12 CFR 204.2(a)(1)(vii)(B)).

(b) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state