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ASIA

Asia and Pacific Council.
Association of Southeast Asian Nations.
Bank of Taiwan.
Korea Exchange Bank.

MIDDLE EAST

Central Treaty Organization.
Regional Cooperation for Development.

[Reg. D, 52 FR 47695, Dec. 16, 1987, as amended at 56 FR 15495, Apr. 17, 1991; 65 FR 12917, Mar. 10, 2000]

§ 204.126 Depository institution participation in "Federal funds" market.

(a) Under § 204.2(a)(1)(vii)(A), there is an exemption from Regulation D for member bank obligations in nondeposit form to another bank. To assure the effectiveness of the limitations on persons who sell Federal funds to depository institutions, Regulation D applies to nondocumentary obligations undertaken by a depository institution to obtain funds for use in its banking business, as well as to documentary obligations. Under § 204.2(a)(1)(vii) of Regulation D, a depository institution's liability under informal arrangements as well as those formally embodied in a document are within the coverage of Regulation D.

(b) The exemption in § 204.2(a)(1)(vii)(A) applies to obligations owed by a depository institution to a domestic office of any entity listed in that section (the *exempt institutions*). The *exempt institutions* explicitly include another depository institution, foreign bank, Edge or agreement corporation, New York Investment (article XII) Company, the Export-Import Bank of the United States, Minbanc Capital Corp., and certain other credit sources. The term *exempt institutions* also includes subsidiaries of depository institutions:

(1) That engage in businesses in which their parents are authorized to engage; or

(2) The stock of which by statute is explicitly eligible for purchase by national banks.

(c) To assure that this exemption for liabilities to exempt institutions is not used as a means by which nondepository institutions may arrange through an exempt institution to *sell* Federal funds to a depository institution, obligations within the exemption must be issued to an exempt institution for its own account. In view of this requirement, a depository institution that *purchases* Federal funds should ascertain the character (not necessarily the identity) of the actual *seller* in order to justify classification of its liability on the transaction as *Federal funds purchased* rather than as a deposit. Any exempt institution that has given general assurance to the purchasing depository institution that sales by it of Federal funds ordinarily will be for its own account and thereafter executes such transactions for the account of others, should disclose the nature of the actual lender with respect to each such transaction. If it fails to do so, the depository institution would be deemed by the Board as indirectly violating section 19 of the Federal Reserve Act and Regulation D.

[52 FR 47695, Dec. 16, 1987]

§ 204.127 Nondepository participation in "Federal funds" market.

(a) The Board has considered whether the use of *interdepository institution loan participations* (*IDLPs*) which involve participation by third parties other than depository institutions in Federal funds transactions, comes within the exemption from *deposit* classification for certain obligations owed by a depository institution to an institution exempt in § 204.2(a)(1)(vii)(A) of Regulation D. An IDLP transaction is one through which an institution that has sold Federal funds to a depository institution, subsequently *sells* or participates out that obligation to a nondepository third party without notifying the obligated institution.

(b) The Board's interpretation regarding Federal funds transactions (12 CFR 204.126) clarified that a depository institutions's liability must be issued to an exempt institution described in § 204.2(a)(1)(vii)(A) of Regulation D for its own account in order to come within the nondeposit exemption for interdepository liabilities. The Board regards transactions which result in third parties gaining access to the Federal funds market as contrary to the exemption contained in § 204.2(a)(1)(vii)(A) of Regulation D regardless of whether the nondepository

institution third party is a party to the initial transaction or thereafter becomes a participant in the transaction through purchase of all or part of the obligation held by the *selling* depository institution.

(c) The Board regards the notice requirements set out in 12 CFR 204.126 as applicable to IDLP-type transactions as described herein so that a depository institution *selling* Federal funds must provide to the purchaser—

(1) Notice of its intention, at the time of the initial transaction, to sell or participate out its loan contract to a nondepository third party, and

(2) Full and prompt notice whenever it (the *selling* depository institution) subsequently sells or participates out its loan contract to a non-depository third party.

[52 FR 47695, Dec. 16, 1987]

§ 204.128 Deposits at foreign branches guaranteed by domestic office of a depository institution.

(a) In accepting deposits at branches abroad, some depository institutions may enter into agreements from time to time with depositors that in effect guarantee payment of such deposits in the United States if the foreign branch is precluded from making payment. The question has arisen whether such deposits are subject to Regulation D, and this interpretation is intended as clarification.

(b) Section 19 of the Federal Reserve Act which establishes reserve requirements does not apply to deposits of a depository institution ''payable only at an office thereof located outside of the States of the United States and the District of Columbia'' (12 U.S.C. 371a; 12 CFR 204.1(c)(5)). The Board rule in 1918 that the requirements of section 19 as to reserves to be carried by member banks do not apply to foreign branches (1918 *Fed. Res. Bull.* 1123). The Board has also defined the phrase *Any deposit that is payable only at an office located outside the United States,* in §204.2(t) of Regulation D, 12 CFR 204.2(t).

(c) The Board believes that this exemption from reserve requirements should be limited to deposits in foreign branches as to which the depositor is entitled, under his agreement with the depository institution, to demand payment only outside the United States, regardless of special circumstances. The exemption is intended principally to enable foreign branches of U.S. depository institutions to compete on a more nearly equal basis with banks in foreign countries in accordance with the laws and regulations of those countries. A customer who makes a deposit that is payable solely at a foreign branch of the depository institution assumes whatever risk may exist that the foreign country in which a branch is located might impose restrictions on withdrawals. When payment of a deposit in a foreign branch is guaranteed by a promise of payment at an office in the United States if not paid at the foreign office, the depositor no longer assumes this risk but enjoys substantially the same rights as if the deposit had been made in a U.S. office of the depository institution. To assure the effectiveness of Regulation D and to prevent evasions thereof, the Board considers that such guaranteed foreign-branch deposits must be subject to that regulation.

(d) Accordingly, a deposit in a foreign branch of a depository institution that is guaranteed by a domestic office is subject to the reserve requirements of Regulation D the same as if the deposit had been made in the domestic office. This interpretation is not designed in any respect to prevent the head office of a U.S. bank from repaying borrowings from, making advances to, or supplying capital funds to its foreign branches, subject to Eurocurrency liability reserve requirements.

[52 FR 47696, Dec. 16, 1987]

§ 204.130 Eligibility for NOW accounts.

(a) *Summary.* In response to many requests for rulings, the Board has determined to clarify the types of entities that may maintain NOW accounts at member banks.

(b) *Individuals.* (1) Any individual may maintain a NOW account regardless of the purposes that the funds will serve. Thus, deposits of an individual used in his or her business including a sole proprietor or an individual doing business under a trade name is eligible to maintain a NOW account in the individual's name or in the ''DBA'' name. However, other entities organized or