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whether the company may be considered as within the servicing exemption is whether the company will perform as principal any banking activities—such as receiving deposits, paying checks, extending credit, conducting a trust department, and the like. In other words, if the mortgage company is to act merely as an adjunct to a bank for the purpose of facilitating the bank's operations, the company may appropriately be considered as within the scope of the servicing exemption.'' (1967 Federal Reserve Bulletin 1911; 12 CFR 225.122.)

(g) The Board believes that the purposes of the branch banking laws and the servicing exemption are related. Generally, what constitutes a branch does not constitute a servicing organization and, vice versa, an office that only performs servicing functions should not be considered a branch. (See 1958 Federal Reserve Bulletin 431, last paragraph; 12 CFR 225.104(e).) When viewed together, the above-cited interpretations on loan production offices and mortgage companies represent a departure from this principle. In reconsidering the laws involved, the Board has concluded that a test similar to that adopted with respect to the servicing exemption under the Bank Holding Company Act is appropriate for use in determining whether or not what constitutes *money [is] lent* at a particular office, for the purpose of the Federal branch banking laws.

(h) Accordingly, the Board considers that the following activities, individually or collectively, do not constitute the lending of money within the meaning of section 5155 of the revised statutes: Soliciting loans on behalf of a bank (or a branch thereof), assembling credit information, making property inspections and appraisals, securing title information, preparing applications for loans (including making recommendations with respect to action thereon), soliciting investors to purchase loans from the bank, seeking to have such investors contract with the bank for the servicing of such loans, and other similar agent-type activities. When loans are approved and funds disbursed solely at the main office or a branch of the bank, an office at which only preliminary and servicing steps are taken is not a place where *money [is] lent*. Because preliminary and servicing steps of the kinds described do not constitute the performance of significant banking functions of the type that Congress contemplated should be performed only at governmentally approved offices, such office is accordingly not a branch.

(i) To summarize the foregoing, the Board has concluded that, insofar as Federal law is concerned, a member bank may purchase for its own account shares of a corporation to perform, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly. Also, a member bank may establish and operate, at any location in the United States, a *loan production office* of the type described herein. Such offices may be established and operated by the bank either directly, or indirectly through a wholly-owned subsidiary corporation.

(j) This interpretation supersedes both the Board's 1966 ruling on *operations subsidiaries* and its 1967 ruling on *loan production offices*, referred to above.

(12 U.S.C. 24, 36, 321, 335)

[33 FR 11813, Aug. 21, 1968; 43 FR 53414, Nov. 16, 1978]

§ 250.142 Meaning of "obligor or maker" in determining limitation on securities investments by member State banks.

(a) From time to time the New York State Dormitory Authority offers issues of bonds with respect to each of which a different educational institution enters into an agreement to make *rental* payments to the Authority sufficient to cover interest and principal thereon when due. The Board of Governors of the Federal Reserve System has been asked whether a member State bank may invest up to 10 percent of its capital and surplus in each such issue.

(b) Paragraph Seventh of section 5136 of the U.S. Revised Statutes (12 U.S.C. 24) provides that ''In no event shall the total amount of the investment securities of any one obligor or maker, held

by [a national bank] for its own account, exceed at any time 10 per centum of its capital stock * * * and surplus fund''. That limitation is made applicable to member State banks by the 20th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335).

(c) The Board considers that, within the meaning of these provisions of law, *obligor* does not include any person that acts solely as a conduit for transmission of funds received from another source, irrespective of a promise by such person to pay principal or interest on the obligation. While an obligor does not cease to be such merely because a third person has agreed to pay the obligor amounts sufficient to cover principal and interest on the obligations when due, a person that promises to pay an obligation, but as a practical matter has no resources with which to assume payment of the obligation except the amounts received from such third person, is not an *obligor* within the meaning of section 5136.

(d) Review of the New York Dormitory Authority Act (N.Y. Public Authorities Law sections 1675–1690), the Authority's interpretation thereof, and materials with respect to the Authority's ''Revenue Bonds, Mills College of Education Issue, Series A'' indicates that the Authority is not an *obligor* on those and similar bonds. Although the Authority promises to make all payments of principal and interest, a bank that invests in such bonds cannot be reasonably considered as doing so in reliance on the promise and responsibility of the Authority. Despite the Authority's obligation to make payments on the bonds, if the particular college fails to perform its agreement to make rental payments to the Authority sufficient to cover all payments of bond principal and interest when due, as a practical matter the sole source of funds for payments to the bondholder is the particular college. The Authority has general borrowing power but no resources from which to assure repayment of any borrowing except from the particular colleges, and rentals received from one college may not be used to service bonds issued for another.

(e) Accordingly, the Board has concluded that each college for which the Authority issues obligations is the sole *obligor* thereon. A member State bank may therefore invest an amount up to 10 percent of its capital and surplus in the bonds of a particular college that are eligible investments under the Investment Securities Regulation of the Comptroller of the Currency (12 CFR Part 1), whether issued directly or indirectly through the Dormitory Authority.

(12 U.S.C. 24, 335)

§ 250.143 Member bank purchase of stock of foreign operations subsidiaries.

(a) In a previous interpretation, the Board determined that a State member bank would not violate the ''stock-purchase prohibition'' of section 5136 of the Revised Statutes (12 U.S.C. 24 ¶7) by purchasing and holding the shares of a corporation which performs ''at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly''.[1] (1968 *Federal Reserve Bulletin* 681, 12 CFR 250.141). The Board of Governors has been asked by a State member bank whether, under that interpretation, the bank may establish such a so-called *operations subsidiary* outside the United States.

(b) In the above interpretation the Board viewed the creation of a wholly-owned subsidiary which engaged in activities that the bank itself could perform directly as an alternative organizational arrangement that would be permissible for member banks unless ''its use would be inconsistent with other Federal law, either statutory or judicial''.

(c) In the Board's judgment, the use by member banks of operations subsidiaries outside the United States would be clearly inconsistent with the statutory scheme of the Federal Reserve Act governing the foreign investments and operations of member banks. It is clear that Congress has given member banks

[1] National banking associations are prohibited by section 5136 of the Revised Statutes from purchasing and holding shares of any corporation except those corporations whose shares are specifically made eligible by statute. This prohibition is made applicable to State member banks by section 9 ¶20 of the Federal Reserve Act (12 U.S.C. 335).