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(b) [Reserved]

(12 U.S.C. 371c)

[33 FR 9866, July 10, 1968, as amended at 67 FR 76622, Dec. 12, 2002]

§ 250.163 Inapplicability of amount limitations to "ineligible acceptances."

(a) Since 1923, the Board has been of the view that ''the acceptance power of State member banks is not necessarily confined to the provisions of section 13 (of the Federal Reserve Act), inasmuch as the laws of many States confer broader acceptance powers upon their State banks, and certain State member banks may, therefore, legally make acceptances of kinds which are not eligible for rediscount, but which may be eligible for purchase by Federal reserve banks under section 14.'' 1923 FR bulletin 316, 317.

(b) In 1963, the Comptroller of the Currency ruled that ''[n]ational banks are not limited in the character of acceptances which they may make in financing credit transactions, and bankers' acceptances may be used for such purpose, since the making of acceptances is an essential part of banking authorized by 12 U.S.C. 24.'' *Comptroller's manual* 7.7420. Therefore, national banks are authorized by the Comptroller to make acceptances under 12 U.S.C. 24, although the acceptances are not the type described in section 13 of the Federal Reserve Act.

(c) A review of the legislative history surrounding the enactment of the acceptance provisions of section 13, reveals that Congress believed in 1913, that it was granting to national banks a power which they would not otherwise possess and had not previously possessed. See remarks of Congressmen Phelan, Helvering, Saunders, and Glass, 51 *Cong. Rec.* 4676, 4798, 4885, and 5064 (September 10, 12, 13, and 17 of 1913). Nevertheless, the courts have long recognized the evolutionary nature of banking and of the scope of the ''incidental powers'' clause of 12 U.S.C. 24. See *Merchants Bank* v. *State Bank*, 77 U.S. 604 (1870) (upholding the power of a national bank to certify a check under the ''incidental powers'' clause of 12 U.S.C. 24).

(d) It now appears that, based on the Board's 1923 ruling, and the Comptroller's 1963 ruling, both State member banks and national banks may make acceptances which are not of the type described in section 13 of the Federal Reserve Act. Yet, this appears to be a development that Congress did not contemplate when it drafted the acceptance provisions of section 13.

(e) The question is presented whether the amount limitations of section 13 should apply to acceptances made by a member bank that are not of the type described in section 13. (The amount limitations are of two kinds:

(1) A limitation on the amount that may be accepted for any one customer, and

(2) A limitation on the aggregate amount of acceptances that a member bank may make.)

In interpreting any Federal statutory provision, the primary guide is the intent of Congress, yet, as noted earlier, Congress did not contemplate in 1913, the development of so-called ''ineligible acceptances.'' (Although there is some indication that Congress did contemplate State member banks' making acceptances of a type not described in section 13 [remarks of Congressman Glass, 51 *Cong. Rec.* 5064], the primary focus of congressional attention was on the acceptance powers of national banks.) In the absence of an indication of congressional intent, we are left to reach an interpretation that is in harmony with the language of the statutory provisions and with the purposes of the Federal Reserve Act.

(f) Section 13 authorizes acceptances of two types. The seventh paragraph of section 13 (12 U.S.C. 372) authorizes certain acceptances that arise out of specific transactions in goods. (These acceptances are sometimes referred to as ''commercial acceptances.'') The 12th paragraph of section 13 authorizes member banks to make acceptances ''for the purpose of furnishing dollar exchange as required by the usages of trade'' in foreign transactions. (Such acceptances are referred to as ''dollar exchange acceptances.'') In the 12th paragraph, there is a 10 percent limit on the amount of dollar exchange acceptances that may be accepted for any

one customer (unless adequately secured) and a limitation on the aggregate amount of dollar exchange acceptances that a member bank may make. (The 12th paragraph, in imposing these limitations, refers to the acceptance of ''such drafts or bills of exchange referred to (in) this paragraph.'') Similarly, the seventh paragraph imposes on commercial acceptances a parallel 10 percent per-customer limitation, and limitations on the aggregate amount of commercial acceptances. (In the case of the aggregate limitations, the seventh paragraph states that ''no bank shall accept such bills to an amount'' in excess of the aggregate limit; the reference to ''such bills'' makes clear that the limitation is only in respect of drafts or bills of exchange of the specific type described in the seventh paragraph.)

(g) Based on the language and parallel structure of the 7th and 12th paragraphs of section 13, and in the absence of a statement of congressional intent in the legislative history, the Board concludes that the per-customer and aggregate limitations of the 12th paragraph apply only to acceptances of the type described in that paragraph (dollar exchange acceptances), and the per-customer and aggregate limitations of the 7th paragraph (12 U.S.C. 372) apply only to acceptances of the type described in that paragraph.

(Interprets and applies 12 U.S.C. 372 and the 12th paragraph of sec. 13 of the Federal Reserve Act, which paragraph is omitted from the United States Code)

[38 FR 13728, May 25, 1973]

§ 250.164 Bankers' acceptances.

(a) Section 207 of the Bank Export Services Act (title II of Pub. L. 97–290) (''BESA'') raised the limits on the aggregate amount of eligible bankers' acceptances (''BAs'') that may be created by an individual member bank from 50 per cent (or 100 per cent with the permission of the Board) of its paid up and unimpaired capital stock and surplus (''capital'') to 150 per cent (or 200 per cent with the permission of the Board) of its capital. Section 207 also prohibits a member bank from creating eligible BAs for any one person in the aggregate in excess of 10 per cent of the institution's capital. This section of the BESA applies the same limits applicable to member banks to U.S. branches and agencies of foreign banks that are subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105). The Board is clarifying the proper meaning of the seventh paragraph of section 13 of the Federal Reserve Act, as amended by the BESA.

(b)(1) This section of the BESA provides that any portion of an eligible BA created by an institution subject to the BA limitations contained therein (''covered bank'') that is conveyed through a participation to another covered bank shall not be included in the calculation of the creating bank's BA limits. The amount of the participation is to be applied to the calculation of the BA limits applicable to the covered bank receiving the participation. Although a covered bank that has reached its 150 or 200 percent limit can continue to create eligible acceptances by conveying participations to other covered banks, Congress has in effect imposed an aggregate limit on the eligible acceptances that may be created by *all* covered banks equal to the sum of 150 or 200 percent of the capital of all covered banks.

(2) The Board has clarified that under the statute an eligible BA created by a covered bank that is conveyed through a participation to an institution that is *not* subject to the limitations of this section of the BESA continues to be included in the calculation of the limits applicable to the creating covered bank. This will ensure that the total amount of eligible BAs that may be created by covered banks does not exceed the limitations established by Congress. In addition, this ensures that participations in acceptances are not used as a device for the avoidance of reserve requirements. Finally, this promotes the Congressional intent, with respect to covered banks, that foreign and domestic banks be on an equal footing and under the same legal requirements.

(3) In addition, the amount of a participation received by a covered bank from an institution not covered by the limitations of the Act is to be included in the calculation of the limits applicable to the covered bank receiving the