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(2) A portfolio company (as defined in the merchant banking subpart of Regulation Y (12 CFR 225.177(c))) controlled by the foreign bank or an affiliate of the foreign bank or a company that would be an affiliate of the branch, agency, or commercial lending company of the foreign bank under paragraph (a)(9) of §223.2 if such branch, agency, or commercial lending company were a member bank; or

(3) A subsidiary of an affiliate described in paragraph (b)(1) or (2) of this section.

(c) *Capital stock and surplus.* For purposes of this subpart, the “*capital stock and surplus*” of a U.S. branch, agency, or commercial lending company of a foreign bank will be determined by reference to the capital of the foreign bank as calculated under its home country capital standards.

Subpart H—Miscellaneous Interpretations

§ 223.71 How do sections 23A and 23B apply to transactions in which a member bank purchases from one affiliate an asset relating to another affiliate?

(a) *In general.* In some situations in which a member bank purchases an asset from an affiliate, the asset purchase qualifies for an exemption under this regulation, but the member bank’s resulting ownership of the purchased asset also represents a covered transaction (which may or may not qualify for an exemption under this part). In these situations, the transaction engaged in by the member bank would qualify as two different types of covered transaction. Although an asset purchase exemption may suffice to exempt the member bank’s asset purchase from the first affiliate, the asset purchase exemption does not exempt the member bank’s resulting covered transaction with the second affiliate. The exemptions subject to this interpretation include §§ 223.31(e), 223.41(a) through (d), and 223.42(e), (f), (i), (j), (k), and (m).

(b) *Examples—(1) The (d)(6) exemption.* A member bank purchases from Affiliate A securities issued by Affiliate B in a purchase that qualifies for the (d)(6) exemption in section 23A. The

member bank’s asset purchase from Affiliate A would be an exempt covered transaction under §223.42(e); but the member bank also would have acquired an investment in securities issued by Affiliate B, which would be a covered transaction between the member bank and Affiliate B under §223.3(h)(2) that does not qualify for the (d)(6) exemption. The (d)(6) exemption, by its terms, only exempts asset purchases by a member bank from an affiliate; hence, the (d)(6) exemption cannot exempt a member bank’s investment in securities issued by an affiliate (even if the securities would qualify for the (d)(6) exemption).

(2) *The sister-bank exemption.* A member bank purchases from Sister-Bank Affiliate A a loan to Affiliate B in a purchase that qualifies for the sister-bank exemption in section 23A. The member bank’s asset purchase from Sister-Bank Affiliate A would be an exempt covered transaction under §223.41(b); but the member bank also would have acquired an extension of credit to Affiliate B, which would be a covered transaction between the member bank and Affiliate B under §223.3(h)(1) that does not qualify for the sister-bank exemption. The sister-bank exemption, by its terms, only exempts transactions by a member bank with a sister-bank affiliate; hence, the sister-bank exemption cannot exempt a member bank’s extension of credit to an affiliate that is not a sister bank (even if the extension of credit was purchased from a sister bank).

Subpart I—Savings Associations—Transactions with Affiliates

§ 223.72 Transactions with affiliates.

(a) *Scope.* (1) This subpart implements section 11(a) of the Home Owners’ Loan Act (12 U.S.C. 1468(a)). Section 11(a) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c1) to every savings association in the same manner and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes the Board to impose additional restrictions on a savings association’s transactions with affiliates.

(2) For the purposes of this subpart, “savings association” is defined at section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and also includes any savings bank or any cooperative bank that is a savings association under 12 U.S.C. 1467a(1). A non-affiliate subsidiary of a savings association is treated as part of the savings association. For purposes of this subpart, a

“non-affiliate subsidiary” is a subsidiary of a savings association other than a subsidiary described at 12 CFR 223.2(b)(1)(i), and (b)(1)(iii) through (v).

(b) *Sections 23A and 23B of the FRA.* A savings association must comply with sections 23A and 23B of the Federal Reserve Act and this part as if it were a member bank, except as described in the following chart.

Provision of Regulation W	Application
(1) 12 CFR 223.2(a)(8)—“Affiliate” includes a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(2) 12 CFR 223.2(a)(12)—Determination that “affiliate” includes other types of companies.	Read to include the following statement: “Affiliate also includes any company that the Board determines, by order or regulation, to present a risk to the safety and soundness of the savings association.”
(3) 12 CFR 223.2(b)(1)(iii)—“Affiliate” includes a subsidiary that is a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(4) 12 CFR 223.3(d)—Definition of “capital stock and surplus.”	“Capital stock and surplus” for a savings association has the same meaning as under the regulatory capital requirements applicable to that savings association.
(5) 12 CFR 223.3(h)(1)—Section 23A covered transactions include an extension of credit to the affiliate.	Read to incorporate paragraph (c)(1) of this section, which prohibits loans or extensions of credit to an affiliate, unless the affiliate is engaged only in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in Regulation LL at 12 CFR 238.54.
(6) 12 CFR 223.3(h)(2)—Section 23A covered transactions include a purchase of or investment in securities issued by an affiliate.	Read to incorporate paragraph (c)(2) of this section, which prohibits purchases and investments in securities issued by an affiliate, other than with respect to shares of a subsidiary.
(7) 12 CFR 223.3(k)—Definition of “depository institution.”	Read to include the following statement: “For the purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the depository institution.”
(8) 12 CFR 223.3(p)—Definition of “financial subsidiary.”	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(9) 12 CFR 223.3(w)—Definition of “member bank.”	Read to include the following statement: “Member bank also includes a savings association. For purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the savings association.”
(10) 12 CFR 223.3(aa)—Definition of “operating subsidiary.”	Does not apply.
(11) 12 CFR 223.31—Application of section 23A to an acquisition of an affiliate that becomes an operating subsidiary.	Read to refer to “a non-affiliate subsidiary” instead of “operating subsidiary.”
(12) 12 CFR 223.32—Rules that apply to financial subsidiaries of a bank.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(13) 12 CFR 223.42(f)(2)—Exemption for purchasing certain marketable securities.	Read to refer to “Thrift Financial Report” instead of “Call Report.” References to “state member bank” are unchanged.
(14) 12 CFR 223.42(g)(2)—Exemption for purchasing municipal securities.	Read to refer to “Thrift Financial Report” instead of “Call Report.” References to “state member bank” are unchanged.
(15) 12 CFR 223.61—Application of sections 23A and 23B to U.S. branches and agencies of foreign banks.	Does not apply to savings associations or their subsidiaries.

(c) *Additional prohibitions and restrictions.* A savings association must comply with the additional prohibitions and restrictions in this paragraph (c). Except as described in paragraph (b) of this section, the definitions in this part apply to these additional prohibitions and restrictions.

(1) *Loans and extensions of credit.* (i) A savings association may not make a loan or other extension of credit to an affiliate, unless the affiliate is solely engaged in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in

§238.54 of Regulation LL (12 CFR 238.54). A loan or extension of credit to a third party is not prohibited merely because proceeds of the transaction are used for the benefit of, or are transferred to, an affiliate.

(ii) If the Board determines that a particular transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in activities other than those described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in §238.54 of Regulation LL (12 CFR 238.54), or the Board has other supervisory concerns

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concerning the transaction, the Board may inform the savings association that the transaction is prohibited under this paragraph (c)(1), and require the savings association to divest the loan, unwind the transaction, or take other appropriate action.

(2) *Purchases or investments in securities.* A savings association may not purchase or invest in securities issued by any affiliate other than with respect to shares of a subsidiary. For the purposes of this paragraph (c)(2), subsidiary includes a bank and a savings association.

[76 FR 56531, Sept. 13, 2011]

PART 224—BORROWERS OF SECURITIES CREDIT (REGULATION X)

Sec.

224.1 Authority, purpose, and scope.

224.2 Definitions.

224.3 Margin regulations to be applied by nonexempted borrowers.

AUTHORITY: 15 U.S.C. 78g.

SOURCE: Reg. X, 48 FR 56572, Dec. 22, 1983, unless otherwise noted.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting part 224, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 224.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation X (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) under the Securities Exchange Act of 1934, as amended (the Act) (15 U.S.C. 78a *et seq.*). This part implements section 7(f) of the Act (15 U.S.C. 78g(f)), the purpose of which is to require that credit obtained within or outside the United States complies with the limitations of the Board's Margin Regulations T and U (12 CFR parts 220 and 221, respectively).

(b) *Scope and exemptions.* The Act and this part apply the Board's margin regulations to United States persons and foreign persons controlled by or acting on behalf of or in conjunction with United States persons (hereinafter borrowers), who obtain credit outside the United States to purchase or carry United States securities, or within the United States to purchase or carry any

securities (both types of credit are hereinafter referred to as purpose credit). The following borrowers are exempt from the Act and this part:

(1) Any borrower who obtains purpose credit within the United States, unless the borrower willfully causes the credit to be extended in contravention of Regulations T or U.

(2) Any borrower whose permanent residence is outside the United States and who does not obtain or have outstanding, during any calendar year, a total of more than \$100,000 in purpose credit obtained outside the United States; and

(3) Any borrower who is exempt by Order upon terms and conditions set by the Board.

[Reg. X, 48 FR 56572, Dec. 22, 1983, as amended by Reg. X, 63 FR 2839, Jan. 16, 1998]

§ 224.2 Definitions.

The terms used in this part have the meanings given to them in sections 3(a) and 7(f) of the Act, and in Regulations T and U. Section 7(f) of the Act contains the following definitions:

(a) *United States person* includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

(b) *United States security* means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

(c) *Foreign person controlled by a United States person* includes any non-corporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or