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FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. OP–1876]

RIN 7100–AH14

Policy Statement on Section 9(13) of the Federal Reserve Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; rescission of a policy statement; issuance of a policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is rescinding its 2023 policy statement interpreting section 9(13) of the Federal Reserve Act (FRA) (2023 Policy Statement), which set out a presumption for how the Board would exercise its authority under that provision and elaborated on supervisory expectations at that time related to ''novel and unprecedented'' activities. The Board is also withdrawing from the record the **SUPPLEMENTARY INFORMATION** that accompanied the 2023 Policy Statement, which discussed specific crypto-asset activities. The Board is replacing the 2023 Policy Statement with a new policy statement on section 9(13) of the FRA, which is designed to facilitate innovation by state member banks in a manner that is consistent with bank safety and soundness and preserving the stability of the U.S. financial system. The new policy statement also provides guidance to uninsured state member banks and uninsured state-chartered bank applicants for membership who may seek to engage in activities as principal that are not permissible for insured state member banks.

DATES: This final rule and policy statement is effective on December 22, 2025.

FOR FURTHER INFORMATION CONTACT: Asad Kudiya, Associate General Counsel, (202) 475–6358 and Kelley O'Mara, Special Counsel, (202) 430–0911, Legal Division; or Juan Climent, Deputy Associate Director, (202) 872–7526 and Jeff Ernst, Manager, (202) 369–9439, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and C Streets NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 9(13) of the Federal Reserve Act (FRA), the Board of Governors of the Federal Reserve System (Board) ''may limit the activities of State member banks and subsidiaries of State member banks in a manner consistent with section 24 of the Federal Deposit Insurance Act [(FDIA)].'' [1] Section 24 prohibits an insured State bank from engaging ''as principal in any type of activity that is not permissible for a national bank unless—(A) the [Federal Deposit Insurance Corporation (FDIC)] has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and (B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.'' [2] In 2023, the Board issued a policy statement interpreting section 9(13) (2023 Policy Statement), setting out a presumption for how the Board intended to use its authority under the provision and elaborating on supervisory expectations at that time regarding ''novel and unprecedented'' activities.[3]

At this time, the Board has concluded that it is appropriate to rescind the 2023 Policy Statement and replace it with a new policy statement (2025 Policy Statement) describing the Board's intention to interpret section 9(13) of the FRA in a manner designed to facilitate innovation by state member banks, consistent with bank safety and soundness and preserving the stability of the U.S. financial system. The Board is also withdrawing from the record portions of the **SUPPLEMENTARY INFORMATION** (2023 Preamble) discussing specific crypto-asset activities. The 2025 Policy Statement (i) articulates the Board's commitment to the principle of ''same activity, same risks, same regulation'' and the reciprocal principle of ''different activity, different risks, different regulation'' in a manner designed to facilitate innovation by state member banks, and (ii) provides further guidance to uninsured state member banks and uninsured state-chartered bank applicants for membership who may seek to engage in activities as principal that are not permissible for insured state member banks.

II. Rescission of the 2023 Policy Statement

In January 2023, the Board published the 2023 Policy Statement,[4] which set out a rebuttable presumption that the Board would exercise its discretion under section 9(13) of the FRA to limit the authority of state member banks to engage as principal in only those activities that are permissible for national banks—in each case, subject to the terms, conditions, and limitations placed on national banks with respect to the activity—unless those activities are permissible for state-chartered banks by federal statute or under part 362 of the FDIC's regulations. The 2023 Policy Statement also (i) reiterated to state member banks that legal permissibility is a necessary, but not sufficient, condition to establish that a state member bank may engage in a particular activity; (ii) reminded state member banks that they must at all times conduct their business and exercise their powers with due regard to safety and soundness, including by having in place appropriate internal controls and information systems; and (iii) highlighted particular risks associated with, and supervisory expectations for, ''novel and unprecedented'' activities. Furthermore, the 2023 Preamble discussed how the 2023 Policy Statement would presumptively apply to particular sets of facts related to certain crypto-asset activities at the time.

The 2023 Policy Statement was part of a series of Board or Board staff issuances in 2022 and 2023 related to crypto-asset activities and supervisory expectations for such activities. Recently, those

[1] 12 U.S.C. 330 (as amended by Federal Deposit Insurance Corporation Improvement Act of 1991 § 303(b), Public Law 102–242, 105 Stat. 2236, 2353).

[2] 12 U.S.C. 1831a(a). *See* 12 CFR part 362.

[3] 88 FR 7848 (Feb. 7, 2023); 12 CFR 208.112.

[4] *See* Press Release: Federal Reserve Board issues policy statement to promote a level playing field for all banks with a federal supervisor, regardless of deposit insurance status (Jan. 27, 2023), *available at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230127a.htm.*

issuances have been rescinded or withdrawn.[5] The Board believes these statements are no longer appropriate given its evolving understanding of the risks of the crypto-asset sector and its desire to facilitate innovation in a manner consistent with safety and soundness and preserving the stability of the U.S. financial system. Similarly, at this time, the Board has determined it should rescind the 2023 Policy Statement in its entirety, including related guidance in the 2023 Preamble.

II. 2025 Policy Statement

The Board continues to believe it is beneficial to provide transparency to the public regarding its interpretation of section 9(13) of the FRA, as well as how it intends to use its authority under the provision. Therefore, the Board is replacing its 2023 Policy Statement with the 2025 Policy Statement.

A. Legal Authority

Under section 9(13) of the Act, the Board ''may limit the activities of State member banks and subsidiaries of State member banks in a manner consistent with section 24 of the [FDIA].'' [6] Section 24 prohibits an insured State bank from engaging ''as principal in any type of activity that is not permissible for a national bank unless—(A) the [FDIC] has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and (B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.'' [7]

The National Bank Act enumerates certain powers that national banks may exercise and authorizes national banks to exercise ''all such incidental powers as shall be necessary to carry on the business of banking.'' [8] Section 7.1000 of the OCC's regulations identifies the criteria that the OCC uses to determine whether an activity is authorized as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh).[9] If a national bank has not been authorized by federal law, including the National Bank Act, to engage in an activity, then national banks are not permitted to engage in such activity.

B. Application

The 2025 Policy Statement applies to insured and uninsured state member banks. Insured state member banks, however, are already required by section 24 of the FDIA and part 362 of the FDIC's regulations to seek approval from the FDIC when seeking to conduct an activity as principal that is not permissible for national banks. As established under those provisions, insured state member banks may not engage as principal in any type of activity that is not permissible for a national bank unless—(i) the FDIC has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and (ii) the insured state member bank is, and continues to be, in compliance with applicable capital standards prescribed by the Board.[10]

If an activity is authorized for national banks to conduct as principal, it is generally permissible for insured state member banks to conduct as principal, provided the activity is permitted under relevant state law and the bank adheres to the terms, conditions, and limitations placed on national banks by the OCC with respect to the activity. Furthermore, if the FDIC, by rule, permits insured state-chartered banks to engage in the activity as principal even if that activity is not permissible for national banks, it is generally permissible for insured state member banks to engage in the activity as principal, provided the activity is permitted under state law. If there is no authority for an insured state-chartered bank to engage in a particular activity as principal under federal statute or part 362 of the FDIC's regulations, an insured state member bank should apply to the FDIC for permission to engage in the activity as principal under part 362 of the FDIC's regulations.[11] Furthermore, if the FDIC has permitted only specific insured state-chartered bank(s) to engage in the activity as principal, other insured state-chartered banks must similarly apply to the FDIC for specific permission.

An uninsured state member bank may not engage in any activity as principal that is not authorized for national banks or insured state-chartered banks, unless the Board has provided otherwise by regulation, order, or other means, or the uninsured state member bank has received the permission of the Board under section 208.3(d)(2) of the Board's Regulation H.[12] Under that provision, a state member bank may not, without the permission of the Board, change the general character of its business or the scope of the corporate powers it exercised at the time of its admission to membership.[13] To the extent firms have inquiries regarding legal permissibility, the Board will engage with the FDIC and OCC as appropriate, consistent with this policy statement.

In determining whether to grant an uninsured state member bank or an uninsured state-chartered bank applicant for membership permission to engage in an activity as principal that is not permissible for insured state member banks, the Board, under the 2025 Policy Statement, will consider whether the uninsured state member bank would be capable of engaging in such activity in a manner that is consistent with bank safety and soundness and preserving the stability of the U.S. financial system. The Board may consider (i) the regulatory framework to which the uninsured state member bank is subject; (ii) the risks presented by the proposed activities and the bank's planned internal controls framework to address such risks; and (iii) how the institution would mitigate the risks otherwise addressed by deposit insurance and FDIC resolution. Among other things, the Board may consider whether the uninsured state member bank has a financial profile that is at least as effective as deposit insurance in minimizing the risk of deposit runs and contagion. This may, for example, be demonstrated if the uninsured state member bank has (i) a sufficient amount of total loss-absorbing capacity (consisting of capital and long-term debt) that is subordinate to the bank's deposits and other short-term liabilities; or (ii) high-quality liquid assets equal to 100 percent of the bank's demand deposits and other short-term liabilities. The Board may also consider whether the uninsured state member bank has a resolution plan that demonstrates how the bank could be recapitalized or wound down in an orderly manner if it fails to remain a viable going concern.

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[5] *See, e.g.,* Press Release: Federal Reserve Board announces the withdrawal of guidance for banks related to their crypto-asset and dollar token activities and related changes to its expectations for these activities (Apr. 24, 2025), *available at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250424a.htm;* Press Release, Federal Reserve Board announces it will sunset its novel activities supervision program and return to monitoring banks' novel activities through the normal supervisory process (Aug. 15, 2025), *available at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250815a.htm.*

[6] 12 U.S.C. 330 (as amended by Federal Deposit Insurance Corporation Improvement Act of 1991 § 303(b), Public Law 102–242, 105 Stat. 2236, 2353).

[7] 12 U.S.C. 1831a(a). *See* 12 CFR part 362.

[8] 12 U.S.C. 24(Seventh).

[9] 12 CFR 7.1000.

[10] 12 U.S.C. 1831a(a)(1).

[11] *See* 12 CFR part 303, subpart G.

[12] 12 CFR 208.3(d)(2).

[13] Uninsured state member banks must receive approval from the Board for permission to conduct an activity as principal, if the FDIC has permitted the activity only for specific insured state bank(s). In such case, the fact that the FDIC has approved at least one insured state-chartered bank to engage in the activity would be highly pertinent to the Board's analysis.

III. Regulatory Analyses

This rule clarifies how the Board interprets and intends to exercise its discretion under section 9(13) of the Act. It is not itself binding on state member banks. Accordingly, the provisions of the Administrative Procedure Act (APA) regarding notice of proposed rulemaking and opportunity for public participation are not applicable.[14]

Because no notice of proposed rulemaking is required to be issued, or has been issued, in connection with this rule, it is not a ''rule'' for purposes of the Regulatory Flexibility Act, and that act, therefore, does not apply.[15]

In accordance with the Paperwork Reduction Act of 1995 (PRA),[16] the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget control number. The Board has reviewed the rule and has determined that it contains no collections of information as defined in the PRA.

Section 722 of the Gramm-Leach-Bliley Act [17] requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present this rule in a simple and straightforward manner.

The APA does not require the Board to delay the effective date of the rule.[18] Accordingly, the rule is effective December 22, 2025.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Consumer protection, Crime, Currency, Federal Reserve System, Flood insurance, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends part 208 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78*l*(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Subpart J—Interpretations

■ 2. Revise § 208.112 to read as follows:

§ 208.112. Policy statement on section 9(13) of the Federal Reserve Act.

(a) Under section 9(13) of the Federal Reserve Act (12 U.S.C. 330), a State member bank may exercise all corporate powers granted it by the State in which it was created except that the Board may limit the activities of State member banks and subsidiaries of State member banks in a manner consistent with section 24 of the Federal Deposit Insurance Act.'' The Board interprets this provision as vesting in the Board the authority to prohibit or otherwise restrict State member banks and their subsidiaries from engaging as principal in any activity (including acquiring or retaining any investment) that is not permissible for a national bank, unless the activity is permissible for State-chartered banks by Federal statute or under section 24(a) of the Federal Deposit Insurance Act.

(b) The Board generally believes that the same activity, presenting the same risks, should be subject to the same regulatory framework, and that a different activity, presenting different risks, should be subject to a different regulatory framework. Consistent with this principle, the Board intends to interpret section 9(13) of the Federal Reserve Act (12 U.S.C. 330) to facilitate innovation by insured and uninsured State member banks in a manner consistent with safety and soundness of State member banks and preserving the stability of the U.S. financial system.

(c) In alignment with this principle, the Board generally presumes that it will exercise its discretion under section 9(13) of the Federal Reserve Act (12 U.S.C. 330) to limit the authority of insured State member banks and their subsidiaries to engage in any activity as principal to those activities that are permissible for national banks—in each case, subject to the terms, conditions, and limitations placed on national banks with respect to the activity—unless those activities are permissible for insured State-chartered banks under section 24 of the Federal Deposit Insurance Act.

(d) If an activity is authorized for national banks to conduct as principal, it is generally permissible for State member banks to conduct as principal, provided that it is permitted under relevant State law and the bank adheres to the terms, conditions, and limitations placed on national banks by the OCC with respect to the activity.

(e) If the FDIC, by rule, permits insured State-chartered banks to engage in any activity as principal under section 24 of the Federal Deposit Insurance Act that is not permissible for national banks, it is generally permissible for State member banks to engage in that activity, provided it is permitted under applicable State law. If there is no authority for an insured State-chartered bank to engage in a particular activity as principal under Federal statute or part 362 of the FDIC's regulations, that activity must be authorized for insured depository institutions by the FDIC under section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a) and the insured State member bank must be in compliance with applicable capital requirements issued by the Board.

(f) An uninsured State member bank may not engage in any activity as principal that is not authorized for national banks or insured State-chartered banks, unless the Board has provided otherwise by regulation, order, or other means, or the uninsured State member bank has received the permission of the Board under § 208.3(d)(2) of the Board's Regulation H. In determining whether to grant an uninsured state member bank or an uninsured State-chartered bank applicant for membership permission to engage in an activity as principal that is not permissible for insured State member banks, the Board will consider whether the uninsured State member bank would be capable of engaging in such activity in a safe and sound manner and in a manner that is consistent with preserving the stability of the U.S. financial system.

By order of the Board of Governors of the Federal Reserve System.

Benjamin W. McDonough,

Deputy Secretary of the Board.

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[14] 5 U.S.C. 553(b)(4)(A).

[15] *See* 5 U.S.C. 601(2).

[16] 44 U.S.C. 3501 *et seq.*

[17] 12 U.S.C. 4809.

[18] *See* 5 U.S.C. 553(d)(2).