cards produced prior to April 1, 2010 may be sold to a consumer on or after August 22, 2010 without satisfying the requirements of §205.20(c)(3), (d)(2), (e)(1), (e)(3), and (f) through January 30, 2011, provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of §§205.20(h)(1)(i) through (iv). Issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the rule (§§205.20(a) through (f)). For example, the in-store signage and other disclosures required by §205.20(h)(2) do not apply to gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the rule.

2. *Expiration of temporary exemption.* Certificates or cards produced prior to April 1, 2010 that do not fully comply with §§205.20(a) through (f) may not be issued or sold to consumers on or after January 31, 2011.

20(h)(2)—Additional Disclosures

1. *Disclosures through third parties.* Issuers may make the disclosures required by §205.20(h)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the disclosures required by §205.20(h)(2) on the issuer's behalf.

2. *General advertising disclosures.* Section 205.20(h)(2) does not impose an obligation on the issuer to advertise gift certificates, store gift cards, or general-use prepaid cards.

APPENDIX A—MODEL DISCLOSURE CLAUSES AND FORMS

1. *Review of forms.* The Board will not review or approve disclosure forms or statements for financial institutions. However, the Board has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii), 205.15(d)(1) and (d)(2), and 205.18(c)(1) and (c)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution's EFT services.

3. *Altering the clauses.* Financial institutions may use clauses of their own design in conjunction with the Board's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word ''card,'' deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

[Reg. E, 61 FR 19686, May 2, 1996, as amended at 66 FR 13412, Mar. 6, 2001; 66 FR 15192, Mar. 16, 2001; 66 FR 17794, Apr. 4, 2001; 71 FR 1661, Jan. 10, 2006; 71 FR 69437, Dec. 1, 2006; 71 FR 1482, Jan. 10, 2006, 71 FR 51450, Aug. 30, 2006; 72 FR 36593, July 5, 2007; 72 FR 63456, Nov. 9, 2007; 74 FR 59055, Nov. 17, 2009; 75 FR 31671, June 4, 2010; 75 FR 16615, Apr. 1, 2010; 75 FR 50688, Aug. 17, 2010; 75 FR 66649, Oct. 29, 2010]

PART 206—LIMITATIONS ON INTERBANK LIABILITIES (REGULATION F)

Sec.
206.1 Authority, purpose, and scope.
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206.6 Waiver.

AUTHORITY: 12 U.S.C. 371b–2

SOURCE: Reg. F, 57 FR 60106, Dec. 18, 1992, unless otherwise noted.

§206.1 Authority, purpose, and scope.

(a) *Authority and purpose.* This part (Regulation F, 12 CFR part 206) is issued by the Board of Governors of the Federal Reserve System (Board) under authority of section 23 of the Federal Reserve Act (12 U.S.C. 371b–2). The purpose of this part is to limit the risks that the failure of a depository institution would pose to insured depository institutions.

(b) *Scope.* This part applies to all depository institutions insured by the Federal Deposit Insurance Corporation.

[Reg. F, 57 FR 60106, Dec. 18, 1992, as amended at 68 FR 53283, Sept. 10, 2003]

§206.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Bank* means an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12

U.S.C. 1813), and includes an insured national bank, state bank, District bank, or savings association, and an insured branch of a foreign bank.

(b) *Commonly-controlled correspondent* means a correspondent that is commonly controlled with the bank and for which the bank is subject to liability under section 5(e) of the Federal Deposit Insurance Act. A correspondent is considered to be commonly controlled with the bank if:

(1) 25 percent or more of any class of voting securities of the bank and the correspondent are owned, directly or indirectly, by the same depository institution or company; or

(2) Either the bank or the correspondent owns 25 percent or more of any class of voting securities of the other.

(c) *Correspondent* means a U.S. depository institution or a foreign bank, as defined in this part, to which a bank has exposure, but does not include a commonly controlled correspondent.

(d) *Exposure* means the potential that an obligation will not be paid in a timely manner or in full. ''Exposure'' includes credit and liquidity risks, including operational risks, related to intraday and interday transactions.

(e) *Foreign bank* means an institution that: (1) Is organized under the laws of a country other than the United States;

(2) Engages in the business of banking;

(3) Is recognized as a bank by the bank supervisory or monetary authorities of the country of the bank's organization;

(4) Receives deposits to a substantial extent in the regular course of business; and

(5) Has the power to accept demand deposits.

(f) *Primary federal supervisor* has the same meaning as the term ''appropriate Federal banking agency'' in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(g) *Total capital* means the total of a bank's Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank's primary federal supervisor. For a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), total capital means the bank's Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter). For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basel Capital Accord, ''total capital'' means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basel Capital Accord (Accord), ''total capital'' means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord.

(h) *U.S. depository institution* means a bank, as defined in § 206.2(a) of this part, other than an insured branch of a foreign bank.

[Reg. F, 57 FR 60106, Dec. 18, 1992, as amended at 68 FR 53283, Sept. 10, 2003; 84 FR 61796, Nov. 13, 2019]

§ 206.3 Prudential standards.

(a) *General.* A bank shall establish and maintain written policies and procedures to prevent excessive exposure to any individual correspondent in relation to the condition of the correspondent.

(b) *Standards for selecting correspondents.* (1) A bank shall establish policies and procedures that take into account credit and liquidity risks, including operational risks, in selecting correspondents and terminating those relationships.

(2) Where exposure to a correspondent is significant, the policies and procedures shall require periodic reviews of the financial condition of the correspondent and shall take into account any deterioration in the correspondent's financial condition. Factors bearing on the financial condition of the correspondent include the capital level of the correspondent, level of nonaccrual and past due loans and leases, level of earnings, and other factors affecting the financial condition of the correspondent. Where public information on the financial condition of the correspondent is available, a bank may base its review of the financial

condition of a correspondent on such information, and is not required to obtain non-public information for its review. However, for those foreign banks for which there is no public source of financial information, a bank will be required to obtain information for its review.

(3) A bank may rely on another party, such as a bank rating agency or the bank's holding company, to assess the financial condition of or select a correspondent, provided that the bank's board of directors has reviewed and approved the general assessment or selection criteria used by that party.

(c) *Internal limits on exposure.* (1) Where the financial condition of the correspondent and the form or maturity of the exposure create a significant risk that payments will not be made in full or in a timely manner, a bank's policies and procedures shall limit the bank's exposure to the correspondent, either by the establishment of internal limits or by other means. Limits shall be consistent with the risk undertaken, considering the financial condition and the form and maturity of exposure to the correspondent. Limits may be fixed as to amount or flexible, based on such factors as the monitoring of exposure and the financial condition of the correspondent. Different limits may be set for different forms of exposure, different products, and different maturities.

(2) A bank shall structure transactions with a correspondent or monitor exposure to a correspondent, directly or through another party, to ensure that its exposure ordinarily does not exceed the bank's internal limits, including limits established for credit exposure, except for occasional excesses resulting from unusual market disturbances, market movements favorable to the bank, increases in activity, operational problems, or other unusual circumstances. Generally, monitoring may be done on a retrospective basis. The level of monitoring required depends on:

(i) The extent to which exposure approaches the bank's internal limits;

(ii) The volatility of the exposure; and

(iii) The financial condition of the correspondent.

(3) A bank shall establish appropriate procedures to address excesses over its internal limits.

(d) *Review by board of directors.* The policies and procedures established under this section shall be reviewed and approved by the bank's board of directors at least annually.

[Reg. F, 57 FR 60106, Dec. 18, 1992, as amended at 68 FR 53283, Sept. 10, 2003]

§ 206.4 Credit exposure.

(a) *Limits on credit exposure.* (1) The policies and procedures on exposure established by a bank under § 206.3(c) of this part shall limit a bank's interday credit exposure to an individual correspondent to not more than 25 percent of the bank's total capital, unless the bank can demonstrate that its correspondent is at least adequately capitalized, as defined in § 206.5(a) of this part.

(2) Where a bank is no longer able to demonstrate that a correspondent is at least adequately capitalized for the purposes of § 206.4(a) of this part, including where the bank cannot obtain adequate information concerning the capital ratios of the correspondent, the bank shall reduce its credit exposure to comply with the requirements of § 206.4(a)(1) of this part within 120 days after the date when the current Report of Condition and Income or other relevant report normally would be available.

(b) *Calculation of credit exposure.* Except as provided in §§ 206.4 (c) and (d) of this part, the credit exposure of a bank to a correspondent shall consist of the bank's assets and off-balance sheet items that are subject to capital requirements under the capital adequacy guidelines of the bank's primary federal supervisor, and that involve claims on the correspondent or capital instruments issued by the correspondent. For this purpose, off-balance sheet items shall be valued on the basis of current exposure. The term ''credit exposure'' does not include exposure related to the settlement of transactions, intraday exposure, transactions in an agency or similar capacity where losses will be passed back to the principal or other party, or other

sources of exposure that are not covered by the capital adequacy guidelines.

(c) *Netting.* Transactions covered by netting agreements that are valid and enforceable under all applicable laws may be netted in calculating credit exposure.

(d) *Exclusions.* A bank may exclude the following from the calculation of credit exposure to a correspondent:

(1) Transactions, including reverse repurchase agreements, to the extent that the transactions are secured by government securities or readily marketable collateral, as defined in paragraph (f) of this section, based on the current market value of the collateral;

(2) The proceeds of checks and other cash items deposited in an account at a correspondent that are not yet available for withdrawal;

(3) Quality assets, as defined in paragraph (f) of this section, on which the correspondent is secondarily liable, or obligations of the correspondent on which a creditworthy obligor in addition to the correspondent is available, including but not limited to:

(i) Loans to third parties secured by stock or debt obligations of the correspondent;

(ii) Loans to third parties purchased from the correspondent with recourse;

(iii) Loans or obligations of third parties backed by stand-by letters of credit issued by the correspondent; or

(iv) Obligations of the correspondent backed by stand-by letters of credit issued by a creditworthy third party;

(4) exposure that results from the merger with or acquisition of another bank for one year after that merger or acquisition is consummated; and

(5) The portion of the bank's exposure to the correspondent that is covered by federal deposit insurance.

(e) *Credit exposure of subsidiaries.* In calculating credit exposure to a correspondent under this part, a bank shall include credit exposure to the correspondent of any entity that the bank is required to consolidate on its Report of Condition and Income or Thrift Financial Report.

(f) *Definitions.* As used in this section:

(1) *Government securities* means obligations of, or obligations fully guaranteed as to principal and interest by, the United States government or any department, agency, bureau, board, commission, or establishment of the United States, or any corporation wholly owned, directly or indirectly, by the United States.

(2) *Readily marketable collateral* means financial instruments or bullion that may be sold in ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid- ask-price market.

(3)(i) *Quality asset* means an asset:

(A) That is not in a nonaccrual status;

(B) On which principal or interest is not more than thirty days past due; and

(C) Whose terms have not been renegotiated or compromised due to the deteriorating financial conditions of the additional obligor.

(ii) An asset is not considered a ''quality asset'' if any other loans to the primary obligor on the asset have been classified as ''substandard,'' ''doubtful,'' or ''loss,'' or treated as ''other loans specially mentioned'' in the most recent report of examination or inspection of the bank or an affiliate prepared by either a federal or a state supervisory agency.

[Reg. F, 57 FR 60106, Dec. 18, 1992, as amended at 68 FR 53283, Sept. 10, 2003]

§ 206.5 Capital levels of correspondents.

(a) *Adequately capitalized correspondents.*[1] For the purpose of this part, a correspondent is considered adequately capitalized if the correspondent has:

(1) A total risk-based capital ratio, as defined in paragraph (e)(1) of this section, of 8.0 percent or greater;

(2) A Tier 1 risk-based capital ratio, as defined in paragraph (e)(2) of this section, of 4.0 percent or greater; and

(3) A leverage ratio, as defined in paragraph (e)(3) of this section, of 4.0 percent or greater.

[1] As used in this part, the term ''adequately capitalized'' is similar but not identical to the definition of that term as used for the purposes of the prompt corrective action standards. See, *e.g.* 12 CFR part 208, subpart D.

(4) Notwithstanding paragraphs (a)(1) through (3) of this section, a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio (as defined in § 217.12 of this chapter) is considered to have met the minimum capital requirements in this paragraph (a).

(b) *Frequency of monitoring capital levels.* A bank shall obtain information to demonstrate that a correspondent is at least adequately capitalized on a quarterly basis, either from the most recently available Report of Condition and Income, Thrift Financial Report, financial statement, or bank rating report for the correspondent. For a foreign bank correspondent for which quarterly financial statements or reports are not available, a bank shall obtain such information on as frequent a basis as such information is available. Information obtained directly from a correspondent for the purpose of this section should be based on the most recently available Report of Condition and Income, Thrift Financial Report, or financial statement of the correspondent.

(c) *Foreign banks.* A correspondent that is a foreign bank may be considered adequately capitalized under this section without regard to the minimum leverage ratio required under paragraph (a)(3) of this section.

(d) *Reliance on information.* A bank may rely on information as to the capital levels of a correspondent obtained from the correspondent, a bank rating agency, or other party that it reasonably believes to be accurate.

(e) *Definitions.* For the purposes of this section:

(1) *Total risk-based capital ratio* means the ratio of qualifying total capital to weighted risk assets.

(2) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to weighted risk assets.

(3) *Leverage ratio* means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with the capital adequacy guidelines of the correspondent's primary federal supervisor.

(f) *Calculation of capital ratios.* (1) For a correspondent that is a U.S. depository institution, the ratios shall be calculated in accordance with the capital adequacy guidelines of the correspondent's primary federal supervisor.

(2) For a correspondent that is a foreign bank organized in a country that has adopted the risk-based framework of the Basel Capital Accord, the ratios shall be calculated in accordance with the capital adequacy guidelines of the appropriate supervisory authority of the country in which the correspondent is chartered.

(3) For a correspondent that is a foreign bank organized in a country that has not adopted the risk-based framework of the Basel Capital Accord, the ratios shall be calculated in accordance with the provisions of the Basel Capital Accord.

[Reg. F, 57 FR 60106, Dec. 18, 1992, as amended at 68 FR 53283, Sept. 10, 2003; 84 FR 61796, Nov. 13, 2019]

§ 206.6 Waiver.

The Board may waive the application of § 206.4(a) of this part to a bank if the primary Federal supervisor of the bank advises the Board that the bank is not reasonably able to obtain necessary services, including payment-related services and placement of funds, without incurring exposure to a correspondent in excess of the otherwise applicable limit.

PART 207—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS (REGULATION G)

Sec.

AUTHORITY: 12 U.S.C. 1831y.

SOURCE: Reg. G, 66 FR 2092, Jan. 10, 2001, unless otherwise noted.