

TITLE 12 - BANKS AND BANKING
CHAPTER 3 - FEDERAL RESERVE SYSTEM
SUBCHAPTER X - POWERS AND DUTIES OF MEMBER BANKS

§ 371c–1. Restrictions on transactions with affiliates

(a) In general

(1) Terms

A member bank and its subsidiaries may engage in any of the transactions described in paragraph

(2) only—

(A) on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or

(B) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

(2) Transactions covered

Paragraph (1) applies to the following:

(A) Any covered transaction with an affiliate.

(B) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase.

(C) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise.

(D) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or to any other person.

(E) Any transaction or series of transactions with a third party—

(i) if an affiliate has a financial interest in the third party, or

(ii) if an affiliate is a participant in such transaction or series of transactions.

(3) Transactions that benefit affiliate

For the purpose of this subsection, any transaction by a member bank or its subsidiary with any person shall be deemed to be a transaction with an affiliate of such bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.

(b) Prohibited transactions

(1) In general

A member bank or its subsidiary—

(A) shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted—

(i) under the instrument creating the fiduciary relationship,

(ii) by court order, or

(iii) by law of the jurisdiction governing the fiduciary relationship; and

(B) whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such bank.

(2) Exception

Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority

of the directors of the bank based on a determination that the purchase is a sound investment for the bank irrespective of the fact that an affiliate of the bank is a principal underwriter of the securities.

(3) Definitions

For the purpose of this subsection—

- (A) the term “security” has the meaning given to such term in section 78c (a)(10) of title 15; and
- (B) the term “principal underwriter” means any underwriter who, in connection with a primary distribution of securities—
 - (i) is in privity of contract with the issuer or an affiliated person of the issuer;
 - (ii) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or
 - (iii) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(c) Advertising restriction

A member bank or any subsidiary or affiliate of a member bank shall not publish any advertisement or enter into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.

(d) Definitions

For the purpose of this section—

- (1) the term “affiliate” has the meaning given to such term in section 371c of this title (but does not include any company described in section ¹ (b)(2) of such section or any bank);
- (2) the terms “bank”, “subsidiary”, “person”, and “security” (other than security as used in subsection (b) of this section) have the meanings given to such terms in section 371c of this title; and
- (3) the term “covered transaction” has the meaning given to such term in section 371c of this title (but does not include any transaction which is exempt from such definition under subsection (d) of such section).

(e) Regulations

The Board may prescribe regulations to administer and carry out the purposes of this section, including—

- (1) regulations to further define terms used in this section; and
- (2) regulations to—
 - (A) exempt transactions or relationships from the requirements of this section; and
 - (B) exclude any subsidiary of a bank holding company from the definition of affiliate for purposes of this section,

if the Board finds such exemptions or exclusions are in the public interest and are consistent with the purposes of this section.

Footnotes

¹ So in original. Probably should be “subsection”.

(Dec. 23, 1913, ch. 6, § 23B, as added Pub. L. 100–86, title I, § 102(a), Aug. 10, 1987, 101 Stat. 564; amended Pub. L. 106–102, title VII, § 738, Nov. 12, 1999, 113 Stat. 1480.)

Amendments

1999—Subsec. (b)(2). Pub. L. 106–102 amended text of par. (2) generally. Prior to amendment, text read as follows: “Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved,

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NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

before such securities are initially offered for sale to the public, by a majority of the directors of the bank who are not officers or employees of the bank or any affiliate thereof.”