and 1468 of this title] shall take effect 1 year after the transfer date.''

[For definition of ''transfer date'' as used in section 608(d) of Pub. L. 111–203, set out above, see section 5301 of this title.]

Pub. L. 111–203, title VI, § 609(b), (c), July 21, 2010, 124 Stat. 1611, provided that:

''(b) PROSPECTIVE APPLICATION OF AMENDMENT.—The amendments made by this section [amending this section] shall apply with respect to any covered transaction between a bank and a subsidiary of the bank, as those terms are defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), that is entered into on or after the date of enactment of this Act [July 21, 2010].

''(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the transfer date.''

[For definition of ''transfer date'' as used in section 609(b), (c) of Pub. L. 111–203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–320, title IV, § 410(c), Oct. 15, 1982, 96 Stat. 1520, provided that: ''Section 23A of the Federal Reserve Act, as amended by this section [this section], shall apply to any transaction entered into after the date of enactment of this Act [Oct. 15, 1982], except for transactions which are the subject of a binding written contract or commitment entered into on or before July 28, 1982, and except that any renewal of a participation in a loan outstanding on July 28, 1982, to a company that becomes an affiliate as a result of the enactment of this Act [see section 1 of Pub. L. 97–320, set out as a Short Title of 1982 Amendments note under section 226 of this title], or any participation in a loan to such an affiliate emanating from the renewal of a binding written contract or commitment outstanding on July 28, 1982, shall not be subject to the collateral requirements of this Act.''

§ 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

(1) In general

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

(A) regulations to further define terms used in this section; and

(B) subject to paragraph (2), if the Board finds that an exemption or exclusion is in the public interest and is consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding, regulations to—

(i) exempt transactions or relationships from the requirements of this section; and

(ii) exclude any subsidiary of a bank holding company from the definition of affiliate for purposes of this section.

(2) Exception

The Board may grant an exemption or exclusion under this subsection only if, during the 60-day period beginning on the date of receipt of notice of the finding from the Board under paragraph (1)(B), the Federal Deposit Insurance Corporation does not object, in writing, to such exemption or exclusion, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.

(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; Pub. L. 111–203, title VI, § 608(b), July 21, 2010, 124 Stat. 1610.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–203, § 608(b)(1)–(4), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), redesignated former subpars. (A) and (B) of par. (2) as cls. (i) and (ii), respectively, of par. (1)(B), realigned margins, and struck out concluding provisions which read as follows: ''if the Board finds such exemptions or exclusions are in the public interest and are consistent with the purposes of this section.''

Subsec. (e)(1)(B). Pub. L. 111–203, § 608(b)(5)(A), inserted ''subject to paragraph (2), if the Board finds that an exemption or exclusion is in the public interest and is consistent with the purposes of this section, and notifies the Federal Deposit Insurance Corporation of such finding,'' before ''regulations'' in introductory provisions.

Subsec. (e)(1)(B)(ii). Pub. L. 111–203, § 608(b)(5)(B), substituted period for comma at end.

Subsec. (e)(2). Pub. L. 111–203, § 608(b)(6), added par. (2).

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, 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.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 year after the transfer date, see section 608(d) of Pub. L. 111–203, set out as a note under section 371c of this title.

§ 371d. Investment in bank premises or stock of corporation holding premises

(a) Conditions of investment

No national bank or State member bank shall invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or make loans to or upon the security of any such corporation—

(1) unless the bank receives the prior approval of the Comptroller of the Currency (with respect to a national bank) or the Board (with respect to a State member bank);

(2) unless the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to the amount of the capital stock of such bank; or

(3) unless—

(A) the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to 150 percent of the capital and surplus of the bank; and

(B) the bank—

(i) has a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of the most recent examination of such bank;

(ii) is well capitalized and will continue to be well capitalized after the investment or loan; and

(iii) provides notification to the Comptroller of the Currency (with respect to a national bank) or to the Board (with respect to a State member bank) not later than 30 days after making the investment or loan.

(b) Definitions

For purposes of this section—

(1) the term ''affiliate'' has the same meaning as in section 221a of this title; and

(2) the term ''well capitalized'' has the same meaning as in section 1831*o*(b) of this title.

(Dec. 23, 1913, ch. 6, § 24A, as added June 16, 1933, ch. 89, § 14, 48 Stat. 184; amended Aug. 23, 1935, ch. 614, title II, § 203(a), 49 Stat. 704; June 30, 1954, ch. 434, § 2, 68 Stat. 358; Pub. L. 104–208, div. A, title II, § 2206, Sept. 30, 1996, 110 Stat. 3009–405.)

AMENDMENTS

1996—Pub. L. 104–208 inserted section catchline and amended text generally. Prior to amendment, text read

[1] So in original. Probably should be ''subsection''.