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FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. 1332]

Risk-Based Capital Guidelines; Leverage Capital Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: To reduce liquidity and other strains being experienced by money market mutual funds, the Federal Reserve System adopted on September 19, 2008, the Asset-Backed Commercial Paper Money Market Mutual Fund Lending Facility (AMLF) that enables depository institutions and bank holding companies to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis if they use the proceeds of the loan to purchase certain types of asset-backed commercial paper (ABCP) from money market mutual funds. To facilitate this Federal Reserve lending program, the Board of Governors of the Federal Reserve System (Board) also adopted an exemption from its leverage and risk-based capital rules for ABCP held by a state member bank or bank holding company as a result of its participation in this program.

DATES: Effective January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Assistant General Counsel, (202) 452–2263, or Andrea R. Tokheim, Counsel, (202) 452–2300, Legal Division; Barbara J. Bouchard, Associate Director, (202) 452–3072, or Juan C. Climent, Senior Supervisory Financial Analyst, (202) 872–7526, Division of Banking Supervision and Regulation. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION:

In light of the ongoing dislocations in the financial markets, and the impact of such dislocations on the functioning of the markets for ABCP and on the operations of money market mutual funds, the Board adopted the AMLF on September 19, 2008. Under the AMLF, depository institutions and bank holding companies (banking organizations) are able to borrow from the Federal Reserve Bank of Boston on a nonrecourse basis on condition that the organizations use the proceeds of the Federal Reserve credit to purchase, at amortized cost, certain highly rated U.S. dollar-denominated ABCP from money market mutual funds. The ABCP purchased must be used to secure the borrowing from the Reserve Bank. The purpose of the AMLF is to assist money market mutual funds to obtain liquidity by enabling them to sell some of their high-credit-quality secured assets at amortized cost. The AMLF, which was initially scheduled to expire on January 31, 2009, has been extended to April 30, 2009.[1]

Banking organizations that participate in the AMLF must acquire and hold ABCP on their balance sheet. These ABCP holdings attract leverage and risk-based capital charges under the Board's regulatory capital rules for state member banks and bank holding companies. To facilitate the AMLF, and for the reasons discussed below, on September 19, 2008, the Board adopted, on an interim final basis, and requested public comment on, an exemption from its leverage and risk-based capital rules for ABCP purchased by a state member bank or bank holding company as a result of its participation in the facility.[2] Specifically, the interim final rule (i) amended the Board's risk-based capital rules for state member banks and bank holding companies to assign a zero percent risk weight to ABCP purchased by the banking organization as a result of its participation in the facility; and (ii) amended the Board's leverage capital rules for state member banks and bank holding companies to permit banking organizations to exclude from average total consolidated assets—the denominator of the leverage ratio—ABCP purchased by the banking organization as a result of its participation in the facility.

After considering the comments, the Board has adopted a final rule that is largely identical to the interim final rule but includes minor changes to reflect the extended duration of the AMLF. The interim final rule provided that the exemptions applied only to ABCP purchased between September 19, 2008, and January 30, 2009 from an affiliated SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a–7 (17 CFR 270.2a–7). This timeframe coincided with the dates of the AMLF. In the final rule, the date range for eligible ABCP purchases has been eliminated, but the rule continues to provide that the exemptions are available only for ABCP that are purchased in order to secure borrowing from the AMLF. As a result, the exemptions effectively will no longer be available once the AMLF expires.

The Board has determined that the current leverage and risk-based capital requirements for ABCP acquired by a banking organization pursuant to the AMLF do not reflect the substantial protections provided to the organization by the Federal Reserve in connection with the facility. Because of the non-recourse nature of the Federal Reserve's credit extension to the banking organization, the organization is not exposed to the credit or market risk of the ABCP purchased by the organization and pledged to the Federal Reserve. Therefore, the Board believes that it is appropriate—and consistent with the economic substance of the transactions—not to impose regulatory capital requirements on the ABCP purchased by a banking organization in connection with its service as an intermediary in the AMLF.

Administrative Procedure Act

Pursuant to sections 553(d) of the Administrative Procedure Act (5 U.S.C. § 553(d)), the Board finds that there is good cause for making the rule effective immediately on January 30, 2009. The Board has adopted the rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The rule will provide immediate relief to depository institutions that elect to participate in the AMLF.

[1] Board of Governors of the Federal Reserve System (2008), ''*Federal Reserve announces the extension of three liquidity facilities through April 30, 2009,*'' press release, December 2.

[2] 73 FR 55706 (2008).

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b), the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule reduces regulatory burden on large and small state member banks and bank holding companies by granting an exemption from the leverage and risk-based capital rules for state member banks and bank holding companies that purchase ABCP from money market mutual funds pursuant to the Federal Reserve's ABCP lending program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use ''plain language'' in all proposed and final rules. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner. The Board invited comment on whether it could take additional steps to make the rule easier to understand. The Board received no comments on this subject.

List of Subjects

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, 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 parts 208 and 225 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, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. In appendix A to part 208, amend section III.C.1. by revising the last undesignated paragraph to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

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III. * * *

C. * * *

1. * * *

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This category also includes ABCP (i) purchased on or after September 19, 2008, by a bank from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a–7 (17 CFR 270.2a–7) and (ii) pledged by the bank to a Federal Reserve Bank to secure financing from the ABCP lending facility (AMLF) established by the Board on September 19, 2008.

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■ 3.In appendix B to part 208, amend section II. by revising paragraph h. to read as follows:

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

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h. Notwithstanding anything in this appendix to the contrary, a bank may deduct from its average total consolidated assets the amount of any asset-backed commercial paper (i) purchased by the bank on or after September 19, 2008, from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a–7 (17 CFR 270.2a–7) and (ii) pledged by the bank to a Federal Reserve Bank to secure financing from the ABCP lending facility (AMLF) established by the Board on September 19, 2008.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. In appendix A to part 225, amend section III.C.1. by revising the last undesignated paragraph to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

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III. * * *

C. * * *

1. * * *

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This category also includes ABCP (i) purchased by a bank holding company on or after September 19, 2008, from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a–7 (17 CFR 270.2a–7) and (ii) pledged by the bank holding company to a Federal Reserve Bank to secure financing from the ABCP lending facility (AMLF) established by the Board on September 19, 2008.

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■ 3. In appendix D to part 225, amend section II. by revising paragraph d. to read as follows:

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

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d. Notwithstanding anything in this appendix to the contrary, a bank holding company may deduct from its average total consolidated assets the amount of any asset-backed commercial paper (i) purchased by the bank holding company on or after September 19, 2008, from an SEC-registered open-end investment company that holds itself out as a money market mutual fund under SEC Rule 2a–7 (17 CFR 270.2a–7) and (ii) pledged by the bank holding company to a Federal Reserve Bank to secure financing from the ABCP lending facility (AMLF) established by the Board on September 19, 2008.

By order of the Board of Governors of the Federal Reserve System, January 28, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–2336 Filed 2–5–09; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R–1330]

Transactions Between Member Banks and Their Affiliates: Exemption for Certain Securities Financing Transactions Between a Member Bank and an Affiliate

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: In light of the continuing unusual and exigent circumstances in the financial markets, the Board has adopted a regulatory exemption for member banks from certain provisions of section 23A of the Federal Reserve Act and the Board's Regulation W. The exemption increases the capacity of member banks, subject to certain conditions designed to help ensure the safety and soundness of the banks, to enter into securities financing transactions with affiliates.

DATES: Effective January 30, 2009.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Assistant General Counsel, (202) 452–2263 or Andrea R. Tokheim, (202) 452–2300, Legal Division, or Norah M. Barger, Deputy Director, (202) 452–2402, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263–4869.

SUPPLEMENTARY INFORMATION:

In light of the ongoing dislocations in the financial markets, and the potential impact of such dislocations on the functioning of the U.S. tri-party repurchase agreement market, the Board adopted on September 14, 2008, on an interim basis with request for public comment, the following exemption from section 23A of the Federal Reserve Act (12 U.S.C. 371c) and the Board's Regulation W (12 CFR part 223). The exemption is meant to facilitate the ability of an affiliate of a member bank (such as an SEC-registered broker-dealer) to obtain financing, if needed, for securities or other assets that the affiliate ordinarily would have financed through the U.S. tri-party repurchase agreement market.

The exemption is subject to several conditions designed to protect the safety and soundness of the member bank. First, the member bank may use the exemption to finance only those asset types that the affiliate financed in the U.S. tri-party repurchase agreement market during the week of September 8–12, 2008.

Second, the transactions must be marked to market daily and subject to daily margin maintenance requirements, and the member bank must be at least as over-collateralized in its securities financing transactions with the affiliate as the affiliate's clearing bank was in its U.S. tri-party repurchase agreement transactions with the affiliate on September 12, 2008. The Board expects the member bank and its affiliate to use standard industry documentation for the exempt securities financing transactions (which would, among other things, qualify the transactions as securities contracts or repurchase agreements for purposes of U.S. bankruptcy law).

Third, to ensure that member banks use the exemption in a manner consistent with its purpose—that is, to help provide liquidity to the U.S. tri-party repurchase agreement market—the aggregate risk profile of the exempt securities financing transactions must be no greater than the aggregate risk profile of the affiliate's U.S. tri-party repurchase agreement transactions on September 12, 2008. The exemption, therefore, permits an affiliate to obtain financing from its affiliated member bank for securities positions that the affiliate did not own or finance in the U.S. tri-party repurchase agreement market on September 12, 2008, but only if the new positions in the aggregate do not increase the overall risk profile of the affiliate's portfolio.

Fourth, the member bank's top-tier holding company must guarantee the obligations of the affiliate under the securities financing transactions (or must provide other security to the bank that is acceptable to the Board). Any member bank that intends to use a form of credit enhancement other than a parent company guarantee must consult in advance with Board staff. An example of the type of other security arrangement that may be acceptable to the Board would be a pledge by the affiliate or parent holding company to the member bank of a sufficient amount of additional liquid, high-quality collateral.

Fifth, a member bank may use the exemption only if the bank has not been specifically informed by the Board, after consultation with the bank's appropriate Federal banking agency, that the bank may not use this exemption. If the Board believes, after such consultation, that the exempt securities financing transactions pose an unacceptable level of risk to the bank, the Board may withdraw the exemption for the bank or may impose supplemental conditions on the bank's use of the exemption.

After considering the comments, the Board has adopted a final rule that is identical to the interim final rule, except that the expiration date has been extended. Consistent with its purpose to ameliorate potential temporary dislocations in the U.S. tri-party repurchase agreement market, the interim final rule provided that the exemption would expire on January 30, 2009, unless extended by the Board. Because of ongoing dislocation in the U.S. tri-party repurchase agreement market, the Board has extended the expiration date of this exemption to October 30, 2009.

The Board notes that any securities financing transactions between the member bank and an affiliate are subject to the market terms requirement of section 23B of the Federal Reserve Act (12 U.S.C. 371c–1). Section 23B requires that financial transactions between a bank and its affiliate be on terms and under circumstances (including credit standards) that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with or involving nonaffiliates. Among other things, section 23B would require the member bank to apply collateral haircuts to its affiliated securities financing transaction counterparty that are at least as strict as the bank would apply to comparable unaffiliated securities financing transaction counterparties.

Administrative Procedure Act

Pursuant to sections 553 (d) of the Administrative Procedure Act (5 U.S.C. 553(d)), the Board finds that there is good cause for making the rule effective immediately on January 30, 2009. The Board has adopted the rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. The rule will provide immediate relief to participants in the U.S. tri-party repurchase agreement market.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The