



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 22, 2005

Barry Lake, Esq.
Suite 109
941 O Street
Lincoln, Nebraska 68508

Dear Mr. Lake:

This is in response to the request by FirsTier Bank (“Bank”), Upton, Wyoming, for an exemption from section 23A of the Federal Reserve Act¹ to permit Bank to purchase real property and improvements (the “premises”) for a branch from First Inn Franchise, Inc. (“First Inn”), Kimball, Nebraska, an affiliate of Bank. Bank proposes to purchase the premises with cash for . Bank has provided independent evidence that indicates that the fair market value of the premises exceeds .

Under section 23A, a bank may engage in “covered transactions,” as defined by the statute, with a single affiliate in an amount up to 10 percent of the bank’s capital and surplus; transactions with all affiliates are limited to 20 percent of the bank’s capital and surplus.² In addition, a bank’s purchase of assets from its affiliate is subject to a prohibition against the purchase of low-quality assets and must be on terms and conditions that are consistent with safe and sound banking practices.³ Bank’s purchase of the premises is

¹ 12 U.S.C. § 371c.

² 12 U.S.C. § 371c(b)(7)(C).

³ 12 U.S.C. § 371c(a)(3) and (4).

a covered transaction and based on the bank's existing capital and surplus, would be limited by section 23A to approximately [REDACTED].⁴

Section 23A specifically authorizes the Board by order or regulation, to exempt from the definition of "purchase of assets" a bank's purchase of real or personal property from its affiliate.⁵ The legislative history of this section indicates that Congress gave the Board the authority to permit a bank to purchase from an affiliate certain expensive properties such as a building because "such transactions are not the type of transactions that section 23A is designed to cover."⁶

Section 23B of the Federal Reserve Act requires that any covered transaction with an affiliate be 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 nonaffiliated companies. In light of the information provided by Bank, it appears that the transaction is consistent with the requirements of section 23B. In addition, the Federal Deposit Insurance Corporation has reviewed Bank's plans to purchase the premises and does not object to the purchase.

In light of these considerations, the transaction appears to be consistent with safe and sound banking practices and on terms that would ensure the quality of the assets transferred. Accordingly, the transaction appears to be consistent with the purposes of section 23A, and the Director of the Division of Banking Supervision and Regulation, pursuant to authority delegated by the Board and with the concurrence of the General Counsel, hereby grants the requested exemption.

⁴ For section 23A purposes, Bank's capital and surplus totaled approximately [REDACTED] as of June 30, 2005.

⁵ 12 U.S.C. § 371c(b)(7)(C).

⁶ S. Rep. No. 536, 97th Cong., 2d Sess. 32 (1982).

This determination is specifically conditioned on Bank's compliance with all the commitments and representations made in connection with the exemption request. These commitments and representations are deemed to be conditions imposed in writing in connection with granting this request and, as such, may be enforced in proceedings under applicable law. This determination is based on the specific circumstances surrounding this transaction and may be revoked in the event of any material change in those circumstances or failure by Bank to continue to observe its commitments. This grant of exemption does not represent a determination concerning the permissibility of any other transactions that are subject to section 23A or concerning any other affiliates of Bank.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert deV. Frierson".

Robert deV. Frierson
Deputy Secretary of the Board

cc: Federal Reserve Bank of Kansas City
Federal Deposit Insurance Corporation