



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

SCOTT G. ALVAREZ
GENERAL COUNSEL

July 23, 2008

Randall J. Erickson, Esq.
Senior Vice President, Chief Administrative Officer
and General Counsel
Marshall & Ilsley Corporation
770 North Water Street
Milwaukee, Wisconsin 53202

Dear Mr. Erickson:

This is in response to your letter requesting a determination that Metavante Technologies, Inc., Milwaukee, Wisconsin, and its subsidiaries (“Metavante”) are not affiliates of the depository institution subsidiaries (collectively, the “Banks”)¹ of Marshall & Ilsley Corporation (“M&I”), also of Milwaukee, for purposes of section 23A and Regulation W.²

Prior to November 1, 2007, Metavante (a data processing company) was a wholly owned subsidiary of M&I. On November 1, 2007, M&I and Metavante separated into two publicly traded companies in a sponsored spin-off transaction. As part of this transaction, 75 percent of the outstanding voting common stock of Metavante was distributed *pro rata* to the shareholders of M&I, and the remaining 25 percent of the outstanding voting common stock of Metavante was sold to an unaffiliated private equity fund, WPM L.P. (“Warburg”),³ that does not own any stock in M&I. Because the shareholding of both companies is widely dispersed and most shares are held in

¹ The five subsidiary depository institutions are M&I Marshall & Ilsley Bank, Milwaukee, Wisconsin; M&I Bank FSB, Las Vegas, Nevada; Southwest Bank of St. Louis, St. Louis, Missouri; Marshall & Ilsley Trust Company, N.A., Milwaukee, Wisconsin; and M&I Bank of Mayville, Mayville, Wisconsin.

² 12 U.S.C. § 371c; 12 CFR part 223.

³ Warburg is managed by Warburg Pincus LLC.

book-entry form in the name of Cede & Co.,⁴ you have represented that M&I and Metavante cannot determine the identities of all their current shareholders or what the total percentage of overlapping shareholding is at this time.

Section 23A and Regulation W limit the amount of “covered transactions” between a bank and any single affiliate to 10 percent of the bank’s capital stock and surplus, and limit the amount of covered transactions between a bank and all its affiliates to 20 percent of the bank’s capital stock and surplus.⁵ “Covered transactions” include the purchase of assets by a bank from an affiliate, the extension of credit by a bank to an affiliate, the issuance of a guarantee by a bank on behalf of an affiliate, and certain other transactions.⁶ The statute and regulation also require a bank to secure its extensions of credit to, and guarantees on behalf of, affiliates with prescribed amounts of collateral.⁷ In addition, section 23A and Regulation W specifically authorize the Board to exempt transactions or relationships from the requirements of the statute and rule if the Board finds such an exemption to be in the public interest and consistent with the purposes of section 23A.⁸

The definition of an “affiliate” of a bank in section 23A and Regulation W includes any company that is controlled, directly or indirectly, by or for the benefit of shareholders who control, directly or indirectly, the bank or any company that controls the bank.⁹ Under the statute and rule, “control” of a company includes ownership or power to vote 25 percent or more of any class of voting securities of the company.¹⁰ As a result, if the same set of shareholders owns 25 percent or more of the voting stock of a bank and of another company, the bank and the company are affiliates for purposes of section 23A.

Both M&I and Metavante are widely held public companies. You have indicated that only two shareholders of M&I own greater than 5 percent of M&I’s voting common stock. Northwestern Mutual owns 5.1 percent of M&I’s voting common stock, and subsidiaries of M&I own 6.3 percent of M&I’s voting common stock in a fiduciary capacity. Warburg is the only shareholder of Metavante that owns more than 5 percent of

⁴ Cede & Co. is the nominee name for The Depository Trust Company, a large clearing house that holds shares in its name for banks, brokers and other financial institutions in order to expedite securities transactions.

⁵ 12 U.S.C. § 371c(a)(1); 12 CFR 223.11 and 223.12.

⁶ 12 U.S.C. § 371c(b)(7); 12 CFR 223.3(h).

⁷ 12 U.S.C. § 371c(c); 12 CFR 223.14.

⁸ 12 U.S.C. § 371c(f)(2); 12 CFR 223.43.

⁹ 12 U.S.C. § 371c(b)(1); 12 CFR 223.2(a)(2).

¹⁰ 12 U.S.C. § 371c(b)(3); 12 CFR 223.3(g)(1).

Metavante's voting common stock. M&I owns or has power to vote less than 5 percent of Metavante's voting common stock and holds that stock in a fiduciary capacity.

While 75 percent of the shares of Metavante were initially distributed to the shareholders of M&I, the shares were not stapled and would be traded freely and separately. You have provided information indicating that shares of the two companies have traded in significant volumes since the spinoff in November 2007. Given the active trading in the stock of the two companies after the spin-off, M&I and Metavante are likely substantially below the initial 75 percent common ownership, though it is not possible to determine whether they are already below 25 percent common ownership.

Both companies are separately managed and operated and have no officer or employee interlocks. Moreover, there are no management agreements between the two companies. Two of the eleven directors of Metavante now serve on the board of M&I. One of the two common directors, Dennis J. Kuester, serves as the chair of the boards of both Metavante and M&I. [REDACTED], Mr. Kuester will step down as chair of the Metavante board but may continue as a director of Metavante, subject to shareholder approval. The other common director is an outside director on both boards.

Under these facts, the Legal Division would not recommend that the Board determine that Metavante is an affiliate of the Banks for purposes of section 23A and Regulation W once Mr. Kuester has stepped down as chair of the Metavante board. This opinion is based on the specific facts and circumstances of the relationship between M&I and Metavante described in your correspondence and this letter. Any material change in those facts or circumstances may result in a different conclusion and should be reported to Board staff.

Sincerely,

(signed)

Scott G. Alvarez

cc: Federal Reserve Bank of Chicago
Federal Deposit Insurance Corporation
Office of Thrift Supervision