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

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

March 14, 2011

John P. Soukenik, Esq.
Elias, Matz, Tiernan & Herrick L.L.P
11th Floor
734 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Soukenik:

This is in response to the request by First Command Bank ("First Command") for an exemption from section 23A of the Federal Reserve Act and the Board's Regulation W to permit First Command to purchase real property from its parent holding company, First Command Financial Services, Inc. ("FCFS"), both of Fort Worth, Texas.[1]

First Command, a federal savings bank, proposes to purchase from FCFS First Command Plaza III ("Command III"), an office building in which First Command currently leases space, for a cash payment of $14.8 million.[2] First

[1] 12 U.S.C. § 371c; 12 CFR part 223.

[2] Command III is part of a complex owned by FCFS that includes another office building, a five-story parking structure, and 7.3 acres of vacant land. On consummation, FCFS would lease office space from First Command at the prevailing market rate and subject to a formal lease agreement ("Lease Agreement"). First Command and FCFS have entered into a Reciprocal Access Easement Agreement that provides each party reciprocal access to common areas and grants First Command a perpetual easement for the right to use 50 percent of the parking spaces currently available in the parking structure. FCFS also has agreed to enter into a real estate services agreement ("Services Agreement") with First Command under which FCFS would compensate First Command in full for the loss of rental revenues if monthly rentals payable fall below 90 percent of the aggregate monthly rentals in effect on the date of execution of the Services

Command has provided an independent appraisal of the building, which states that the fair market value of the building is approximately $14.8 million. The building currently is subject to a mortgage of approximately $15 million. FCFS has committed to the Board that it will repay the outstanding mortgage in full with the proceeds of the sale.

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. "Covered transactions" include an extension of credit by a bank to an affiliate and "a purchase of assets . . . from [an] affiliate, except such purchase of real and personal property as may be specifically exempted by the Board by order or regulation."[3] In addition, section 23A and Regulation W prohibit a bank from purchasing low-quality assets from an affiliate and require that all covered transactions between a bank and an affiliate be on terms that are consistent with safe and sound banking practices.

Because First Command is a subsidiary of FCFS, FCFS is an affiliate of First Command for purposes of section 23A and Regulation W. As a result, the proposed purchase of Command III by First Command from FCFS would be a covered transaction under section 23A and Regulation W. The aggregate amount of the covered transaction would be approximately $14.8 million. This amount would exceed the thrift's quantitative limit on covered transactions with a single affiliate, which is approximately $6.3 million.[4] Accordingly, First Command seeks an exemption from section 23A and Regulation W to enable First Command to purchase Command III from FCFS.

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 affiliates.[5] The legislative history of this section

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Agreement. The Services Agreement would remain in effect for a period of 10 years after the consummation of the proposed transaction.

[3] 12 U.S.C. § 371c(b)(7)(c).

[4] As of December 31, 2010, First Command's capital stock and surplus was approximately $54.7 million.

[5] 12 U.S.C. § 371c(b)(7)(c).

indicates that Congress has given the Board the authority to permit a bank to purchase from an affiliate certain expensive properties, such as a computer or building, because "such transactions are not the type of transactions that section 23A is designed to cover."[6]

First Command's proposal to purchase the office building appears to be the type of transaction that Congress anticipated that the Board would exempt from the limits of the statute. First Command has represented that the proposed purchase would provide it an annual cost savings of $724,000 when compared to the current cost of being a lessee. The purchase of First Command's premises would reduce its operating expenses and provide First Command income from leasing the space that it would not occupy in the short term.

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 or involving nonaffiliated companies. Based on the appraisal provided by First Command, it appears that the transaction is consistent with the requirements of section 23B.

The terms of the Lease Agreement (prevailing market rate), Reciprocal Access Easement Agreement (equal access to common areas and use of half the parking spaces), and Services Agreement (compensation by FCFS if monthly rentals decrease by a certain percentage) also appear to be consistent with section 23B. In addition, First Command's primary regulator, the Office of Thrift Supervision, as well as the Federal Deposit Insurance Corporation ("FDIC"), have not objected to the proposed purchase.[7]

In light of these considerations and all the facts presented, the proposed transaction appears to be consistent with safe and sound banking practices and on terms that would ensure the quality of the assets transferred.

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

[7] See attached letter from the FDIC. The FDIC's non-objection to the proposed transaction is subject to a condition that, at the time the transaction is consummated, First Command and FCFS will execute the Services Agreement and the Lease Agreement, each in the form provided to the Board and the FDIC in connection with First Command's exemption request.

Accordingly, the transaction appears to be consistent with the purposes of section 23A. The Director of the Division of Banking Supervision and Regulation, acting pursuant to authority delegated by the Board, and with the concurrence of the General Counsel, hereby grants the requested exemption.

This determination is specifically conditioned on compliance by FCFS and First Command with all the commitments and representations they made to the Board in connection with this exemption request. These commitments and representations are deemed to be conditions imposed in writing in connection with granting the request and, as such, may be enforced in proceedings under applicable law.

This determination is based on the specific facts and circumstances described in your correspondence and this letter. Any material change in those facts or circumstances or any failure by FCFS or First Command to observe any of their commitments or representations may result in a different conclusion or revocation of the exemption.

Very truly yours,

Robert deV. Frierson

Robert deV. Frierson
Deputy Secretary of the Board

Attachment

cc: Vincent Pacheco, Director of Applications
Federal Reserve Bank of Dallas
Federal Deposit Insurance Corporation
Office of Thrift Supervision