



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

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

January 30, 2009

William E. Stern, Esq.
Goodwin Procter LLP
620 Eighth Avenue
New York, New York 10018

Dear Mr. Stern:

This is in response to the request by Fifth Third Bank (“Bank”), Cincinnati, Ohio, for an exemption from section 23A of the Federal Reserve Act and the Board’s Regulation W to allow (i) Fifth Third Securities, Inc. (“Securities Affiliate”), Cincinnati, to hold and receive payments on variable rate demand notes (“VRDNs”) that are backed by a liquidity facility provided by Bank and (ii) Bank to purchase up to \$1 billion of VRDNs from Securities Affiliate, in both cases in excess of the quantitative limits of section 23A and the Board’s Regulation W.¹

The VRDNs Bank proposes to purchase from Securities Affiliate are notes issued by a trust that is sponsored by a municipality or corporate entity and supported by a liquidity facility provided by Bank. The interest rate on the VRDNs resets either daily or weekly, and the VRDNs are remarketed in a remarketing process managed by Securities Affiliate. If the remarketing is not successful, the VRDN holders are entitled to put the notes back to the trust,

¹ The Board has delegated authority to the Director of the Division of Banking Supervision and Regulation (“Director”), with the concurrence of the General Counsel, to approve requests for exemptions from the quantitative limits of section 23A and Regulation W when (i) a securities affiliate of the bank holds VRDNs or similarly structured securities that are backed by a liquidity facility provided by the bank or (ii) the bank purchases such securities from its securities affiliate, in each case subject to substantially the same conditions and limits established by the Board in the 23A exemption granted to Branch Banking and Trust Company, Winston-Salem, North Carolina, on January 9, 2009.

which would draw on the liquidity facility provided by Bank to repurchase the VRDNs from the holders. In some cases, Securities Affiliate may hold the VRDNs in its inventory in the event of a failed remarketing.

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Consistent with its past practice, Securities Affiliate proposes to repurchase VRDNs from current third-party holders as an accommodation to its customers that want liquidity. Securities Affiliate proposes to hold the VRDNs, possibly for an extended period of time, until it is possible to remarket the notes. During that time, Securities Affiliate would receive regular interest payments on the notes, which initially are funded by Bank under the liquidity facility. Those interest payments are then reimbursed by the issuer. Alternatively, Securities Affiliate may sell the VRDNs to Bank or tender the VRDNs to the trust, which in turn would draw on the liquidity facility provided by Bank to acquire the VRDNs from Securities Affiliate.

Section 23A and Regulation W limit the aggregate 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 aggregate amount of covered transactions between a bank and all its affiliates to 20 percent of the bank's capital stock and surplus.² “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.³ 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.⁴ In addition, section 23A and Regulation W treat a transaction by a member bank with any person as a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate under the “attribution rule.”⁵

Because Securities Affiliate is a financial subsidiary of Bank, Securities Affiliate is an affiliate of Bank for purposes of section 23A and

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

³ 12 U.S.C. § 371c(b)(7) and 12 CFR 223.3(h).

⁴ 12 U.S.C. § 371c(c) and 12 CFR 223.14.

⁵ 12 U.S.C. § 371c(a)(2) and 12 CFR 223.16.

Regulation W.⁶ As a result, Bank's purchases of VRDNs from Securities Affiliate would be covered transactions under section 23A and Regulation W. In addition, as a result of the attribution rule in section 23A and Regulation W, Bank's funding of a trust's repurchase of VRDNs from Securities Affiliate through Bank's liquidity facility also would be a covered transaction.⁷ Moreover, while Securities Affiliate holds the VRDNs, the interest or other payments Securities Affiliate would receive, which are initially funded by Bank under the liquidity arrangement, would be covered transactions under the attribution rule. The aggregate amount of the covered transactions would be up to \$1 billion. This amount would exceed Bank's quantitative limits under the statute and rule.⁸ Accordingly, Bank is requesting an exemption from the quantitative limits and collateral requirements of section 23A and Regulation W in connection with the proposed transactions.

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.⁹ The Board previously has indicated that the twin purposes of section 23A are (i) to protect against a depository institution suffering losses in transactions with affiliates; and (ii) to limit the ability of an institution to transfer to its affiliates the subsidy arising from the institution's access to the federal safety net.¹⁰

⁶ 12 U.S.C. § 371c(b)(2)(A) and 12 CFR 223.2(b)(1)(ii).

⁷ The trust is an unaffiliated third party, and the proceeds of the bank's loan to the trust under the liquidity arrangement are transferred to Securities Affiliate when the trust makes payments to holders of the notes, including Securities Affiliate. As a result, the extension of credit from Bank to the trust would be a covered transaction to the extent the proceeds are used to make interest and other payments to Securities Affiliate.

⁸ As of September 30, 2008, Bank's capital stock and surplus was \$6.6 billion. Accordingly, for purposes of section 23A and Regulation W, the 10 percent limit for covered transactions with a single affiliate would be \$659 million, and the 20 percent limit for covered transactions with all affiliates in the aggregate would be \$1.3 billion.

⁹ 12 U.S.C. § 371c(f)(2) and 12 CFR 223.43.

¹⁰ 67 Federal Register 76560 (Dec. 12, 2002).

Bank believes that granting the requested exemption would provide public benefits. In particular, Bank has indicated that permitting Bank to enter into the proposed transactions with Securities Affiliate would provide an efficient means for Securities Affiliate to help its customers obtain liquidity for VRDNs.

Granting the exemption would not expose Bank to additional credit or market risk. Bank is obligated to advance funds to the trusts under the terms of the liquidity facility agreements regardless of whether the notes are held or tendered to the trusts by third-party investors or by Securities Affiliate. Moreover, the exemption would be subject to the following limits and conditions that are designed to help ensure that the transactions are consistent with safe and sound banking practices:

- The aggregate dollar amount of exempt transactions must be limited to \$1 billion.
- The VRDNs purchased or funded by Bank must be externally rated by a nationally recognized statistical rating organization at single-A or better, or the credit equivalent thereof.
- Bank and Bank's parent, Fifth Third Bancorp ("Fifth Third"), must remain well capitalized, as defined in the FDIC's prompt corrective action regulation and the Board's Regulation Y, respectively.¹¹

Because the exemption is meant to provide flexibility in addressing the current market disruption, the exemption applies only to covered transactions relating to VRDNs purchased by Securities Affiliate from customers on or before December 31, 2009. The proposed transactions also are subject to the market terms requirement of section 23B of the Federal Reserve Act, which requires that transactions between a bank and its affiliates be on terms that are at least as favorable to the bank as the terms of comparable transactions between the bank and a third party.

The Director has reviewed your request for an exemption from section 23A and Regulation W and, after consulting with the General Counsel, has determined that granting the exemption appears to be consistent with the purposes of section 23A and in the public interest. Based on the foregoing and all the facts of record, the Director, acting pursuant to authority delegated by the Board, has granted the requested exemption, subject to the conditions and limits discussed

¹¹ See 12 CFR 325.103 and 12 CFR 225.2(r).

above. This determination is specifically conditioned on compliance by Fifth Third and Bank 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 by the Board 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 and circumstances or any failure by Fifth Third or Bank to observe any commitments or representations may result in a different conclusion or in a revocation of the exemption.

Very truly yours,

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

cc: David Tatum, Vice President
Federal Reserve Bank of Atlanta
Federal Deposit Insurance Corporation