



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM

WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

June 20, 1986

Mark Aldrich, Esq.  
West Tower, Suite 7000  
4000 MacArthur Boulevard  
Newport Beach, California 92660

Dear Mr. Aldrich:

This is in response to your request for a determination whether the proposed purchase by a member bank of real estate from a partnership owned by a majority of the members of the board of directors of the bank is subject to the limitations and requirements of section 23A of the Federal Reserve Act (12 U.S.C. § 371c). We understand that [REDACTED] a company owned by 6 of the 8 members of the board of directors of [REDACTED] ("Bank") owns real property that is currently under lease to Bank for its use as bank premises. Bank now proposes to acquire title to approximately 40 percent of the total lot for the purposes of building a permanent bank office. The Office of the Comptroller of the Currency, by letter dated April 9, 1986, has reviewed this transaction and determined that the proposed purchase by Bank is permissible under the National Bank Act and, after reviewing independent appraisals of the property, has determined that the proposed purchase price is reasonable and consistent with safe and sound banking practices.

Section 23A places certain quantitative, qualitative, and collateral requirements on transactions between member banks and their affiliates. A company, including a partnership, that has a majority of its directors in common with the board of directors of a member bank is deemed to be an affiliate of the member bank for purposes of section 23A, 12 U.S.C. § 371c(b)(1)(C)(ii). Under this general definition, [REDACTED] could be deemed to be an affiliate of Bank for purposes of the requirements of section 23A.

Section 23A provides an exemption from its definition of an affiliate for a company established solely for the purpose of holding bank premises. 12 U.S.C. §371c(b)(2)(B). [REDACTED] holds no assets other than a single parcel of

property, over 70 percent of which is currently under lease to Bank for its use as bank premises. The property Bank proposes to acquire from [REDACTED] will be used exclusively for Bank's premises. The purchase price for the property is based on an independent appraisal, and has been reviewed and found consistent with safe and sound banking practice by the OCC, Bank's primary regulator.

Based on these facts, it is our opinion that [REDACTED] is engaged in holding bank premises for purposes of the exception from the definition of affiliate provided in section 371c(b)(2)(B) of the Federal Reserve Act for companies engaged solely in holding bank premises. This opinion is consistent with the Board's prior decisions interpreting the provisions regarding bank premises under the Bank Holding Company Act and other provisions of the Federal Reserve Act. Accordingly, based on the entire record, including the fact that the purchase price for the property appears reasonable, it is our opinion that [REDACTED] is exempt from the definition of affiliate under the provisions of section 23A, and therefore, the sale of real property proposed by [REDACTED] to Bank is exempt from the requirements of section 23A. In this regard, we note that, following the sale proposed by [REDACTED] [REDACTED] will be engaged in holding property that is not being used as bank premises, and would appear thereafter to be an affiliate of Bank engaged in activities other than holding bank premises. Accordingly, future transactions between [REDACTED] and Bank would appear to be subject to the provisions of section 23A.

This opinion is based on the facts as you have presented them, and any change in circumstances may result in a different opinion.

Very truly yours,

(signed)

J. Virgil Mattingly, Jr.