



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

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

April 13, 2009

William J. Sweet, Jr., Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111

Dear Mr. Sweet:

This is in response to the request by CIT Group Inc. (“CIT”), New York, New York, and its wholly owned subsidiary, CIT Bank (“Bank”), Salt Lake City, Utah, for an exemption from section 23A of the Federal Reserve Act and the Board’s Regulation W<sup>1</sup> to permit Bank to acquire all the shares of three nonbank affiliates: (1) CIT Education Loan Trust 2008-BBC (“Trust”), (2) Education Funding Resources III, LLC (“EFR III”), and (3) Education Funding Resources, LLC (“EFR”) (collectively, “Legal Entities”).

CIT is restructuring its business lines and is planning to move most of its operations to Bank.<sup>2</sup> As part of this reorganization, Bank proposes to acquire Legal Entities. Trust and EFR III are securitization entities that hold loans that are 97 percent guaranteed by the U.S. Department of Education under the Federal Family Education Loan Program. EFR is a corporation that holds government-guaranteed student loans that are awaiting transfer to a securitization vehicle or that will not be securitized.

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

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<sup>1</sup> 12 U.S.C. §371c; 12 CFR part 223.

<sup>2</sup> On December 22, 2008, the Board approved CIT’s application to become a bank holding company on conversion of CIT Bank from an industrial loan company to a state bank.

and surplus. “Covered transactions” include a bank’s purchase of assets from an affiliate and a bank’s extension of credit to an affiliate. The statute and regulation also require a bank to secure its extensions of credit to, and certain other covered transactions with, affiliates with prescribed amounts of collateral. In addition, section 23A and Regulation W prohibit a bank from purchasing low-quality assets from an affiliate.

Legal Entities and Bank are affiliates for purposes of section 23A and Regulation W because they are controlled by CIT. Regulation W provides that a bank’s acquisition of a security issued by a company that was an affiliate of the bank before the acquisition is treated as a purchase of assets by the bank from an affiliate if (i) the company becomes an operating subsidiary of the bank as a result of the transaction and (ii) the company has liabilities at the time of the acquisition.<sup>3</sup> Legal Entities are currently affiliates, and would become operating subsidiaries, of Bank immediately after the reorganization. At the time of the restructuring, Legal Entities will have outstanding liabilities. Accordingly, CIT’s transfer of all the capital stock of Legal Entities to Bank would be an asset purchase subject to the quantitative and qualitative limitations of section 23A and Regulation W. The value of the covered transaction for purposes of Regulation W would be approximately \$5.66 billion – the total liabilities of Legal Entities at the time of the reorganization.<sup>4</sup>

To accomplish the reorganization, CIT has requested an exemption from section 23A and Regulation W to permit Bank to acquire all the shares of Legal Entities. Section 23A and Regulation W specifically authorize the Board to exempt, in its discretion, transactions or relationships from the requirements of the statute and rule if the Board finds such exemptions to be in the public interest and consistent with the purposes of section 23A.<sup>5</sup>

The Board has approved exemptions under section 23A for one-time asset transfers that are part of a corporate reorganization and that are structured to ensure the quality of the transferred assets. As in previous cases reviewed by the Board, the proposed transaction in this case is a byproduct of a corporate reorganization that would proceed in stages. CIT is

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<sup>3</sup> See 12 CFR 223.31(a).

<sup>4</sup> See 12 CFR 223.31(b).

<sup>5</sup> 12 U.S.C. § 371c(f)(2); 12 CFR 223.43(a).

transferring Legal Entities to Bank as part of a larger reorganization. CIT is a leading provider of factoring services in the United States and a leading lender in the Small Business Administration's 7a programs. CIT has represented that the exemption would provide a public benefit by allowing CIT access to additional sources of financing to support its overall lending programs.

The proposed transfer of Legal Entities from CIT to Bank would be subject to the market-terms requirement of section 23B of the Federal Reserve Act.<sup>6</sup> In light of the fact that the student loan portfolio is at least 97 percent guaranteed by an agency of the federal government and because of the commitments made by CIT, the proposed transaction appears to pose limited risk to Bank.

CIT and Bank have made the commitments listed in the appendix to ensure that Bank is made whole if the quality of the assets purchased by the bank deteriorates.<sup>7</sup> CIT and Bank have committed to comply with these commitments for five years, and the commitments are similar to commitments relied on by the Board in previous internal corporate reorganizations. These commitments require that the funds transferred by CIT to Bank to support any of the low-quality assets will remain in the bank to provide a cushion of additional capital in excess of Bank's required regulatory capital. The commitments ensure that these funds will remain available to Bank and will not be returned to CIT through a dividend or a return of capital.<sup>8</sup> In addition, a majority of Bank's directors will review and approve the transaction before the purchase of assets is consummated. The Federal Deposit Insurance Corporation ("FDIC") has reviewed the transaction and informed the Board that it has no objection to the proposal.

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<sup>6</sup> See 12 U.S.C. §371c-1(a)(1). Section 23B requires that the proposed transaction be on terms that are substantially the same, or at least as favorable to Bank, as those prevailing at the time for comparable transactions with unaffiliated companies.

<sup>7</sup> See 12 CFR 223.41(d).

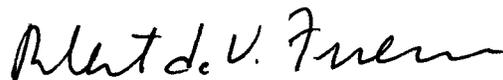
<sup>8</sup> See Board letter dated December 21, 2007, to Andres Navarette, Esq. (Capital One Financial Corporation).

In light of these considerations and all the facts of record, the reorganization 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.

This determination is specifically conditioned on compliance by CIT and Bank with all the commitments and representations made to the Board in connection with the exemption request. These commitments and representations are deemed to be conditions imposed in writing in connection with granting the exemption and, as such, may be enforced in proceedings under applicable law. This determination also is based on the specific facts and circumstances of the proposed transaction and may be revoked if a material change in those facts or circumstances occurs or if CIT or Bank fails to observe any of its commitments or representations. Granting this exemption request does not represent a determination concerning the permissibility of any other transactions engaged in by CIT or Bank that are subject to section 23A or Regulation W.

Please notify the Federal Reserve Bank of New York in writing when this transaction is completed.

Sincerely yours,



Robert deV. Frierson  
Deputy Secretary of the Board

Attachment

cc: Federal Reserve Bank of New York  
Federal Deposit Insurance Corporation  
Utah Department of Financial Institutions

## APPENDIX

1. CIT commits that it will contribute cash to Bank in the amount of the book value of any low-quality assets that are transferred to Bank at the time that Legal Entities are transferred to Bank. CIT also commits that Bank will hold an amount of risk-based capital equal to the book value of any low-quality assets that are transferred to Bank so long as Bank retains ownership or control of the transferred assets. For example, under this dollar-for-dollar capital requirement, the risk-based capital charge for each transferred low-quality loan asset would be 100 percent (equivalent to a 1250 percent risk weight), rather than the 8 percent requirement (equivalent to a 100 percent risk weight) that would apply to a similar defaulted loan asset that is not a part of the transferred asset pool.<sup>9</sup>
2. CIT commits for a five-year period following the contribution of Legal Entities to make either (i) a cash payment to Bank equal to the book value at the end of each calendar quarter, plus write-downs during that quarter by Bank, of any transferred assets (other than those that were low-quality assets at the time of the initial transfer) that were low-quality assets at the end of that quarter; or (ii) quarterly purchases from Bank of any transferred assets (other than those that were low-quality assets at the time of the initial transfer) that were low-quality assets at the end of that quarter at a price equal to the book value at the end of that quarter plus write-downs during that quarter by Bank of any such transferred assets. CIT will make the cash payment or will purchase the assets within 30 days after the end of each calendar quarter. CIT also commits that Bank will hold an amount of risk-based capital equal to the book value of any transferred assets that become low-quality so long as Bank retains ownership or control of the transferred assets as described in the example above.<sup>10</sup>

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<sup>9</sup> Once the capital pool has been allocated to specific assets as described above, the capital cannot be applied to other low-quality assets if the initial low-quality asset returns to performing status. Bank can only apply the allocated capital pool to new assets if the initial assets are fully paid or sold.

<sup>10</sup> Id.

3. CIT commits for a five-year period following the contribution of Legal Entities to make cash contributions to Bank equal to (i) any amount that Bank is required to contribute to any securitization vehicle that is transferred to Bank at the time that Legal Entities are transferred to Bank to support the performance of that vehicle trust and (ii) the amount of any write-down during each calendar quarter of any transferred residual or retained interest in the vehicle. CIT will make the cash contribution within 30 days after the end of each calendar quarter. CIT also commits that Bank will hold an amount of risk-based capital equal to the cash contributions so long as Bank retains ownership or control of the exposures.
4. Before the purchase of assets is consummated, a majority of Bank's directors will review and approve the transaction.
5. Bank and CIT must remain well capitalized, as defined in the FDIC's prompt corrective action regulation and the Board's Regulation Y, respectively.<sup>11</sup>
6. Bank commits to obtain FDIC approval prior to declaring or paying dividends, for a time period to be determined by the FDIC.

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<sup>11</sup> See 12 CFR 325.103 and 12 CFR 225.2(r).