



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

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

June 6, 2018

Paul A. Adams, Esq.
Shumaker Williams, P.C.
P.O. Box 88
Harrisburg, Pennsylvania 17108

Dear Mr. Adams:

This is in response to the request by American Bank for an exemption from section 23A of the Federal Reserve Act and the Board's Regulation W to permit American Bank to purchase real property from its affiliate, The Jaindl Building LP ("Jaindl LP"), both of Allentown, Pennsylvania.¹

American Bank, a state member bank, proposes to purchase from Jaindl LP the real property where its main office is located for a cash payment of \$10.8 million.² American Bank has provided an independent appraisal of the building, which states that its fair market value is approximately \$11.2 million. The building currently is subject to two mortgages with a combined value of approximately \$4.6 million. Jaindl LP has committed to the Board that it will repay the outstanding mortgage liabilities in full with the proceeds of the sale, and American Bank has committed that it will not assume any liabilities in connection with this transaction.

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.³ "Covered transactions" include an

¹ 12 U.S.C. § 371c; 12 CFR part 223.

² American Bank currently leases 83 percent of the building from Jaindl LP. The remaining 17 percent of the building is leased by an unaffiliated third party. Upon consummation, the unaffiliated third party would continue to lease office space from American Bank at the prevailing market rate and subject to a formal lease agreement ("Lease Agreement").

³ 12 U.S.C. § 371c(a)(1); 12 CFR 223.11–.12.

extension of credit by a bank to an affiliate and a purchase of assets from an affiliate.⁴ 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.⁵

Because the same shareholder controls both entities, Jaindl LP and American Bank are affiliates for purposes of section 23A and Regulation W.⁶ As a result, the proposed purchase by American Bank from Jaindl LP would be a covered transaction under section 23A and Regulation W. The aggregate amount of the covered transaction would be approximately \$10.8 million. This amount would exceed the bank's quantitative limit on covered transactions with a single affiliate, which is approximately \$6.8 million.⁷ Accordingly, American Bank seeks an exemption from section 23A and Regulation W to enable American Bank to purchase from Jaindl LP the real property where its main office is located.

Section 23A specifically authorizes the Board by order or regulation to exempt transactions or relationships of a state member bank from the requirements of the statute if (i) the Board and the FDIC jointly find that the exemption is in the public interest and consistent with the purposes of section 23A and (ii) the FDIC finds that the exemption does not present an unacceptable risk to the Deposit Insurance Fund.⁸ The Board has routinely approved exemptions under section 23A for one-time purchases of property of this nature by a bank. As noted in previous cases reviewed by the Board, the purchase of a building by a bank from an affiliate appears to be the type of transaction that Congress anticipated would be exempted from the limits of the statute. American Bank estimates that owning rather than leasing the property would yield annual cost savings of at least \$380,000 and provide it with rental income related to the space that it does not occupy. According to American Bank, this exemption would be in the public

⁴ 12 U.S.C. § 371c(b)(7)(A), (C); 12 CFR 223.3(h)(1), (3).

⁵ 12 U.S.C. § 371c(a)(3)–(4); 12 CFR 223.13, 223.15.

⁶ Under section 23A, any company that is controlled, directly or indirectly, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, the member bank, is an affiliate of the member bank. 12 U.S.C. § 371c(b)(1)(C)(i); 12 CFR 223.2(a)(3). Mr. Mark W. Jaindl owns approximately 43 percent of American Bank Inc., Allentown, Pennsylvania, the parent bank holding company of American Bank, and owns or controls, directly or indirectly, 100 percent of Jaindl LP. Accordingly, American Bank and Jaindl LP are affiliates for purposes of section 23A and Regulation W.

⁷ As of March 31, 2018, American Bank's capital stock and surplus was approximately \$67.6 million.

⁸ 12 U.S.C. § 371c(f)(2)(B)(ii).

interest because its purchase of the premises would reduce its operating expenses and provide it with rental income related to the space that it does not occupy.

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 the bank, as those prevailing at the time for comparable transactions with or involving nonaffiliated companies.⁹ Based on the appraisal provided by American Bank, it appears that the transaction is consistent with the requirements of section 23B. The terms of the Lease Agreement also appear to be consistent with section 23B, since the third-party tenant would lease office space from American Bank at the prevailing market rate.

In light of these considerations and all the facts presented, the transaction appears to be consistent with the purposes of section 23A and in the public interest. The FDIC has informed the Board that it finds that the exemption (i) is in the public interest and consistent with the purposes of section 23A and (ii) does not present an unacceptable risk to the Deposit Insurance Fund. Accordingly, the Director of the Division of 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 action is based on the representations made in your request and in related correspondence and on the commitments provided in connection with the proposal. The commitments constitute conditions imposed in writing in connection with this action and, as such, may be enforced in proceedings under applicable law.

Sincerely yours,

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

Attachment

cc: Federal Deposit Insurance Corporation
Pennsylvania Department of Banking and Securities

⁹ 12 U.S.C. § 371c-1(a)(1).

Appendix

In connection with the proposal by American Bank, Allentown, Pennsylvania, to acquire the land and building that serves as the main office of American Bank, The Jaindl Building L.P. and American Bank hereby make the following commitments and representations to the Federal Reserve Bank of Philadelphia (the "Reserve Bank") and the Board of Governors of the Federal Reserve System ("Board"):

1. American Bank will not assume any liabilities in connection with the acquisition of the building that serves as the main office of American Bank and the associated land.
2. The Jaindl Building L.P. will make full payment and extinguish all of the mortgage liabilities associated with the land and building (totaling \$4,633,032.15 as of March 30, 2018) from the proceeds received from American Bank at the time of consummation of this transaction.
3. American Bank will notify the Reserve Bank in writing as soon as possible following consummation of this transaction.

The Jaindl Building L.P. and American Bank acknowledge that these commitments and representations are deemed to be conditions imposed in writing by the Board in connection with American Bank's proposed acquisition and, as such, may be enforced in proceedings under applicable law.