



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

MARK E. VAN DER WEIDE
GENERAL COUNSEL

August 16, 2021

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200 South Michigan Avenue, Suite 1100
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Dear. Mr. Silvia:

This is in response to your request for guidance on whether sections 23A and 23B of the Federal Reserve Act and the Board's Regulation W¹ would apply to loans made by [REDACTED] ("Bank"), [REDACTED], to nonaffiliates to purchase mobile homes that would be located in [REDACTED] ("Park"), a mobile home park affiliated with Bank. Bank and Park are affiliates for purposes of section 23A because they are controlled by the same shareholder.²

According to the information you have provided, Bank would make loans to nonaffiliates to purchase mobile homes located in Park from other nonaffiliates. Residents of Park lease plots of land in Park on which to place their mobile homes, typically for a term of 12 months. Park provides and charges its residents for property management services, including cleaning, maintenance, and landscaping. Park requires prospective residents to apply and receive approval to live in Park and requires existing residents to maintain their mobile homes in conformance with aesthetic requirements set by Park. Residents also must obtain Park's approval prior to making any modifications to their homes. When a resident seeks to sell a home located on land leased by Park, the

¹ 12 U.S.C. §§ 371c and 371c-1; 12 CFR part 223.

² 12 U.S.C. § 371c(b)(1)(C)(i); 12 CFR 223.2(a)(3).

home must pass an inspection by Park for compliance with the aesthetic requirements. Park also has a right of first refusal for any proposed sale of a mobile home located on land within Park, and, as noted above, must approve a buyer to live in a mobile home located on land in Park if the buyer would be a new resident.

Section 23A and Regulation W limit the total amount of covered transactions between a bank and any single affiliate, and between a bank and all of its affiliates, to 10 percent and 20 percent of the bank's capital stock and surplus, respectively.³ Section 23A and Regulation W also prohibit a bank from purchasing low-quality assets from an affiliate,⁴ require that a covered transaction between a bank and an affiliate be on terms that are consistent with safe and sound banking practices,⁵ and require extensions of credit by a bank to its affiliates to be fully collateralized as set forth in the statute.⁶ In addition, section 23B generally requires transactions between a bank and its affiliates to be on terms that are at least as favorable to the bank as those for comparable transactions between the bank and a third party.⁷

Although sections 23A and 23B and Regulation W generally apply only to transactions between a bank and an affiliate, a transaction between a bank and a nonaffiliate must be treated 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."⁸ The purpose of this provision, known as the "attribution rule," is "to prevent a member bank from evading the restrictions in [section 23A] by using intermediaries and to limit the exposure that a member bank has to customers of affiliates of the bank."⁹

Bank represents that, when it makes a loan to a nonaffiliate to allow it to purchase a mobile home from another nonaffiliate, the proceeds of the loan are not directly transferred to Park. Board staff previously has indicated, however, that the

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

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

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

⁶ 12 U.S.C. § 371c(c); 12 CFR 223.14.

⁷ 12 U.S.C. § 371c-1(a); 12 CFR 223.51.

⁸ 12 U.S.C. §§ 371c(a)(2) and 371c-1(a)(3); 12 CFR 223.16(a); 12 CFR 223.52(b).

⁹ 67 *Fed. Reg.* 76560, 76577 (Dec. 12, 2002). Regulation W sets forth certain exceptions to application of the attribution rule that are not relevant here. *See* 12 CFR 223.16(b)-(c).

proceeds of a bank loan that are not transferred directly to an affiliate nevertheless may be used for the benefit of the affiliate for purposes of the attribution rule. For example, Board staff previously determined that crop production loans made by a bank to nonaffiliate farmers that rented farmland from the bank's affiliate were subject to the attribution rule.¹⁰ In that prior case, staff based its determination on the following key facts: the bank knew that the loans would be used to grow crops on land rented by the borrowing farmers from the affiliate, the loan was critical for the farmer's ability to produce crops on the land leased from the affiliate, and the affiliate actively participated in the farmers' management of the rented land.¹¹

The facts in this case are similar. Bank is aware that the proceeds of the loan would enable the nonaffiliate borrower to purchase a mobile home in Park: the loan application would indicate the proposed address for the mobile home. In addition, Bank's loan would facilitate the receipt of substantial rent payments by Park. Park also actively superintends a resident's use of a mobile home, including by serving as landlord, controlling who lives in Park, setting aesthetic standards for homes, requiring residents to receive Park's approval to improve or sell a home, and retaining a right of first refusal for home sales. Accordingly, the proceeds of a loan by Bank to a nonaffiliate to purchase a mobile home in Park from another nonaffiliate would be for the benefit of Park. Such a loan would be subject to the attribution rule and the requirements of sections 23A and 23B and Regulation W as if the loan were made directly by Bank to Park.

¹⁰ Letter from J. Virgil Mattingly, Board General Counsel, to Charla Jackson (Aug. 26, 1996), <https://www.federalreserve.gov/boarddocs/legalint/FederalReserveAct/1996/19960826/>.

¹¹ *Id.*

This determination is based on the specific facts and circumstances described in your correspondence with my staff and in this letter. Any change in the facts or circumstances may result in a different conclusion. If you have any questions about this letter, please contact Lucy Chang (202-475-6331) or Josh Strazanac (202-452-2457), both of the Legal Division.

Sincerely,

Mark Van Der Weide /s/