



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

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

November 23, 2022

Mr. Martin Gruenberg  
Acting Chairman  
Federal Deposit Insurance Corporation  
550 Seventeenth Street NW  
Washington, DC 20429

Dear Acting Chairman Gruenberg:

This letter concerns the request by HomeStreet Bank, Seattle, Washington, a state nonmember bank, for an exemption from certain requirements of section 23A of the Federal Reserve Act<sup>1</sup> to engage in an internal corporate reorganization through which HomeStreet Bank would acquire its affiliate, HomeStreet Capital Corporation (“Capital” and, together with HomeStreet Bank, the “HomeStreet organization”), also of Seattle, Washington. The proposed acquisition would consolidate the HomeStreet organization’s lending activities under the Federal National Mortgage Association’s Delegated Underwriting and Servicing mortgage-backed security program (the “DUS program”) within HomeStreet Bank. HomeStreet Bank would acquire Capital’s assets for no consideration, but would assume Capital’s liabilities, including contingent liabilities related to Capital’s loan portfolio. Following the reorganization, Capital would be dissolved.

Section 23A limits the amount of covered transactions between a bank and any single affiliate to 10 percent of the bank’s capital stock and surplus, and limits the amount of covered transactions between a bank and all of its affiliates to 20 percent of the bank’s capital stock and surplus.<sup>2</sup> Covered transactions include a bank’s purchase of assets from an affiliate.<sup>3</sup> In addition, section 23A and Regulation W prohibit a bank from purchasing low-quality assets from an affiliate.<sup>4</sup>

Under section 23A, an affiliate includes “any company that controls the member bank and any other company that is controlled by the company that controls the

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<sup>1</sup> 12 U.S.C. § 371c.

<sup>2</sup> 12 U.S.C. § 371c(a)(1).

<sup>3</sup> 12 U.S.C. § 371c(b)(7)(C); 12 CFR 223.31.

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

member bank.”<sup>5</sup> HomeStreet Bank and Capital are both wholly owned subsidiaries of HomeStreet, Inc., Seattle, Washington. Accordingly, Capital and HomeStreet Bank are affiliates for purposes of section 23A.

Although HomeStreet Bank would acquire Capital’s assets for no consideration, it would assume Capital’s liabilities, including contingent liabilities related to Capital’s loan portfolio and participation in the DUS program.<sup>6</sup> The covered transaction is valued at \$444.0 million, which is the maximum amount of liabilities that HomeStreet would assume from Capital, including contingent liabilities, and represents 52 percent of HomeStreet Bank’s capital stock and surplus as of September 30, 2022. This transaction exceeds the quantitative limits in section 23A for covered transactions both with a single affiliate and with all affiliates. HomeStreet Bank seeks an exemption from the quantitative limits of section 23A to assume Capital’s liabilities in connection with the proposed internal corporate reorganization.

Because HomeStreet Bank is a state nonmember bank, the Federal Deposit Insurance Corporation (“FDIC”) may, by order, exempt the proposed investment from the requirements of section 23A if the Board and FDIC jointly find the exemption to be (i) in the public interest and (ii) consistent with the purposes of section 23A.<sup>7</sup> The FDIC also must find that the exemption does not present an unacceptable risk to the Deposit Insurance Fund.<sup>8</sup>

HomeStreet Bank asserts that the proposed transaction is in the public interest because the proposed reorganization would achieve efficiencies and cost savings and improve its ability to provide products and services to customers. Following the proposed transaction, HomeStreet Bank, which has been authorized as a DUS program lender, would conduct all DUS program lending on behalf of the HomeStreet organization.

The proposed transaction appears to be consistent with the purposes of section 23A. The Board previously has stated that the dual purposes of section 23A are to protect against a depository institution suffering losses in transactions with affiliates and to limit the ability of a depository institution to transfer to its affiliates the subsidy

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<sup>5</sup> 12 U.S.C. § 371c(b)(1)(A). Section 23A applies to a nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank. 12 U.S.C. § 1828(j)(1).

<sup>6</sup> For loans that participate in the DUS program, Capital shares losses with the Federal National Mortgage Association.

<sup>7</sup> 12 U.S.C. § 371c(f)(2)(B)(ii)(I).

<sup>8</sup> 12 U.S.C. § 371c(f)(2)(B)(ii)(II).

arising from the institution's access to the federal safety net.<sup>9</sup> The Board previously has approved exemptions for one-time asset transfers that are part of an internal corporate reorganization and are structured to ensure the transferred assets' quality.<sup>10</sup> HomeStreet, Inc. has provided commitments listed in the Appendix, similar to those relied upon by the Board in granting section 23A exemptions to allow previous internal corporate reorganizations, to ensure that HomeStreet Bank is protected from losses should the quality of the assets purchased by the bank in connection with the proposal deteriorate.

In light of these considerations and all the facts presented, the Director of the Division of Supervision and Regulation, pursuant to authority delegated by the Board, and with the concurrence of the General Counsel, finds that the proposed exemption is in the public interest and consistent with the purposes of section 23A.

This action is specifically conditioned on compliance by HomeStreet, Inc., and HomeStreet Bank with all the commitments they have made to the Board in connection with this exemption request. The commitments constitute conditions imposed in writing in connection with this action and, as such, may be enforced in proceedings under applicable law. This determination is based on the specific facts and circumstances described in HomeStreet Bank's correspondence and this letter. Any change in the facts or circumstances may result in a different conclusion or revocation of the findings in this letter. This action also is specifically conditioned on receipt by HomeStreet, Inc., and by HomeStreet Bank of all regulatory approvals required by the proposal and compliance with any conditions imposed in connection with such approvals.

Sincerely yours,

*Michele Taylor Fennell (signed)*

Michele Taylor Fennell  
Deputy Associate Secretary of the Board

cc: John Michel, HomeStreet Bank

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<sup>9</sup> 67 Fed. Reg. 76,560, 76,560 (Dec. 12, 2002).

<sup>10</sup> See, e.g., Letter from Robert deV. Frierson, Deputy Secretary of the Board, to William J. Sweet, Jr., Esq. (Apr. 13, 2009), <https://www.federalreserve.gov/supervisionreg/legalinterpretations/federalreserveact20090413.pdf> (CIT Group Inc.); Letter from Robert deV. Frierson, Deputy Secretary of the Board, to Andres L. Navarette, Esq. (Dec. 21, 2007), <https://www.federalreserve.gov/supervisionreg/legalinterpretations/federalreserveact20071221.pdf> (Capital One Financial Corporation).

## Appendix

In connection with the request filed by HomeStreet Bank, Seattle, Washington, to the Federal Deposit Insurance Corporation for an exemption from the requirements of section 23A of the Federal Reserve Act<sup>1</sup> in order to engage in an internal corporate reorganization through which HomeStreet Bank would acquire its affiliate, HomeStreet Capital Corporation, Seattle, Washington (“Capital”), HomeStreet Bank and Capital’s parent holding company, HomeStreet, Inc., Seattle, Washington (“HomeStreet”), and HomeStreet Bank provide the following commitments to the Board of Governors of the Federal Reserve System:

1. HomeStreet commits that it will contribute funds to HomeStreet Bank in the amount of the book value of any low-quality assets that are transferred to HomeStreet Bank at the time that Capital is transferred to HomeStreet Bank. HomeStreet and HomeStreet Bank also commit that HomeStreet Bank will hold an amount of risk-based capital equal to the book value of any low-quality assets that are transferred to HomeStreet Bank so long as HomeStreet Bank retains ownership or control of the transferred assets.
2. HomeStreet commits for a two-year period following the internal corporate reorganization to make either (i) a cash payment to HomeStreet Bank equal to the book value at the end of each calendar quarter plus write-downs during that quarter by HomeStreet 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 HomeStreet 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 HomeStreet Bank of any such transferred assets. HomeStreet will make the cash payment or will purchase the assets within 30 days after the end of each calendar quarter. HomeStreet and HomeStreet Bank also commit that HomeStreet 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 HomeStreet Bank retains ownership or control of the transferred assets as described in the example above.
3. Upon the effective date of the internal corporate reorganization, HomeStreet will agree to indemnify Bank for any loss share payments or losses incurred by

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<sup>1</sup> 12 U.S.C. § 371c.

the Bank as a result of Fannie Mae (“FNMA”) exercising its rights under the loss share agreement between FNMA and Capital to the extent that the aggregate of such losses exceeds the total stockholder's equity of Capital as of the Date of the Contribution. This indemnification will apply to any Delegated Underwriting and Servicing (“DUS”) loans sold to FNMA by Capital and shall remain in place for as long as any DUS loans sold to FNMA by Capital remain outstanding, and thereafter for so long as FNMA has a right to bring a claim for any such loans.

4. Before the internal corporate organization is consummated, a majority of HomeStreet Bank’s directors will review and approve the transaction.

HomeStreet and HomeStreet Bank agree that these commitments are deemed to be conditions imposed in writing by the Federal Reserve System in connection with its findings and decision on the exemption request and, as such, may be enforced in proceedings under applicable law.

HomeStreet and HomeStreet Bank understand that, as a condition of any exemption, HomeStreet Bank must remain well capitalized based on the Federal Deposit Insurance Corporation’s risk-based capital guidelines and the modifications to those guidelines described in commitments (1) and (2) above.