



**Interpretive Letter #1181
October 2023**

September 21, 2023

Subject: [] – Regulation W Exemption Request

Dear []:

I am writing in response to your letter dated July 18, 2022 (“Request”), submitted on behalf of [] (“Bank”), requesting an exemption from Section 23A of the Federal Reserve Act and the Board’s Regulation W.¹ Specifically, the Bank requested an exemption from the quantitative limits under Section 23A to enable the Bank to purchase [], the limited liability company that owns the bank premises on which the Bank’s main office and headquarters operations are located.

The Bank is a \$[] national bank located in []. The Bank is wholly owned by [*BHC*]. The Bank was organized in [] by an organizing group led by Mr. [], who currently holds approximately [] percent of [*BHC*]. Mr. [] formed a limited liability company, [*LLC*], to acquire, finance, and construct the Bank’s main office facility and lease the main office premises to the Bank. [*LLC*] continues to lease the main office premises to the Bank. Mr. []’s percentage ownership of [*LLC*] is currently over [] percent. [*LLC*]’s sole business is owning the corporate complex that houses the Bank’s main office and headquarters premises, leasing the premises to the Bank and its service providers, and leasing excess space on the premises to third parties.

In the proposed transaction, the Bank would acquire the bank premises housing its main office and headquarters operations by purchasing all of the outstanding membership interests in [*LLC*] from the current members of [*LLC*], all of whom are individuals. Upon completion of the transaction, [*LLC*] would be an operating subsidiary of the Bank.

¹ See 12 U.S.C. § 371c; 12 C.F.R. § 223.

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 of its affiliates to 20 percent of the bank’s capital stock and surplus.² “Covered transactions” include the purchase of an asset from an affiliate and the purchase of or an investment in securities issued by an affiliate.³ In addition, Section 23A and Regulation W prohibit a bank from purchasing low-quality assets from an affiliate and requires that all covered transactions between a bank and an affiliate be on terms that are consistent with safe and sound banking practices.⁴

[*LLC*] is an affiliate of the Bank for purposes of Section 23A because the same shareholder, Mr. [], controls both the Bank’s holding company and [*LLC*]. The Bank’s purchase of [*LLC*] is a covered transaction under Section 23A because the Bank will be purchasing all of the outstanding membership interests in [*LLC*].

The amount of the covered transaction is \$[],⁵ which exceeds the 10 percent limit under Section 23A and Regulation W for transactions with a single affiliate. The transaction would also cause the aggregate amount of the Bank’s covered transactions with all affiliates to exceed the 20 percent limit under Section 23A and Regulation W. Thus, the Bank cannot purchase [*LLC*] without an exemption from these quantitative limits.

Section 23A specifically authorizes the OCC by order to exempt transactions or relationships of a national bank from the requirements of the statute if (i) the OCC and the Board jointly find that the exemption is in the public interest and consistent with the purposes of Section 23A and (ii) the FDIC does not object in writing to the finding based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.⁶ Previous exemptions have been found to be in the public interest when, among other things, the exemption reduces

² 12 U.S.C. § 371c(a)(1); 12 C.F.R. §§ 223.11, 223.12.

³ 12 U.S.C. § 371c(b)(7)(B) and (b)(7)(C); 12 C.F.R. § 223.3(h)(2) and (h)(3).

⁴ 12 U.S.C. § 371c(a)(3) and (a)(4); 12 C.F.R. §§ 223.13, 223.15.

⁵ The Bank’s acquisition of the membership interests in [*LLC*] is a purchase of assets from [*LLC*] pursuant to Section 23A, and therefore must be valued in accordance with its implementing regulation at 12 C.F.R. § 223.31(b). The initial valuation for the transaction was calculated as \$[] (the total consideration given by the Bank for the purchase of the membership interest in [*LLC*]) plus \$[] (the total liabilities of [*LLC*]). Therefore, the transaction is valued in accordance with Section 23A.

⁶ Section 608 of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended Section 23A to authorize the OCC to issue exemptions by order for national banks and federal savings associations if the conditions noted above are satisfied. *See* section 608(a)(4)(A)(iv) of the Dodd-Frank Act, codified at 12 U.S.C. § 371c(f)(2)(B)(i); *see also* 12 C.F.R. § 31.3(c) (implementing OCC regulations). Previously, the Board had exclusive authority to issue exemptions by order after considering the public interest and twin purposes of Section 23A. Given that the Dodd-Frank Act did not modify the standard the OCC is to apply, the OCC’s interpretation is based on the Board’s existing precedent regarding exemptions by order under Section 23A.

operational costs, increases efficiency, or improves a member bank's ability to serve its clients.⁷ The twin purposes of Section 23A are (i) to protect against a depository institution suffering losses in transactions with affiliates, and (ii) to limit the ability of an institution to transfer to its affiliates the subsidy arising from the institution's access to the federal safety net, meaning deposit insurance from the FDIC.⁸

Granting the exemption will reduce the Bank's operating expenses by saving the Bank approximately \$[] in annual rent expenses and produce rental income from the leasing of excess space to third parties. The transaction is in the public interest because it will strengthen the Bank's financial condition and will enable the Bank to better serve its customers and communities.⁹

Granting the exemption appears to be consistent with the twin purposes of Section 23A. The proposed transaction does not present a risk of suffering significant losses in transactions with affiliates, nor does it result in a transfer of a subsidy. The transaction is a one-time purchase by the Bank of the company that holds the Bank's premises. The Bank is purchasing the premises at fair value and the proposed transaction will reduce the Bank's operating expenses and increase its income. Moreover, the Board has previously approved exemptions under Section 23A for one-time purchases of property of this nature by a bank.¹⁰ As noted in prior cases, the purchase of a building appears to be the type of transaction that Congress anticipated would be exempted from the limits of the statute.¹¹

In light of these considerations and all the facts presented, the OCC finds that the exemption is consistent with the purposes of Section 23A and in the public interest. The Board has informed

⁷ See e.g. Board Interpretive Letter dated April 22, 2009, to Michael Civitella, Goldman Sachs Bank USA (One-time asset transfers that are part of a corporate reorganization that are subject to conditions to ensure the quality of the transferred assets are in the public interest because it will "enhance the bank's efficiency, thereby allowing it to extend additional credit into the market and serve its customers better."); Board Interpretive Letter dated June 12, 2007, to Courtney D. Allison, Wachovia Corporation (determining that exempting ongoing securities borrowing transactions benefits the public interest by "reduc[ing] the cost of securities-borrowing transactions for [the bank], and would, therefore, make [the bank] more competitive when pricing equity derivative and other transactions for customers."); Board Interpretive Letter dated June 7, 2005, to John H. Huffstutler, Esq., Bank of America Corporation (determining that an exemption for proposed securities borrowing transactions with an affiliated broker-dealer provided "several public benefits" including "increase[ing] the equity derivative opportunities of Bank customers, lower[ing] the price of equity derivatives for Bank customers, and, hence, increase[ing] the ability of Bank customers to hedge their own risks of operations or investments.").

⁸ 67 Fed. Reg. 76560, 76560 (Dec. 12, 2002).

⁹ The Bank also represents that the transaction is consistent with section 23B of the Federal Reserve Act. See 12 U.S.C. § 371c-1. Section 23B generally requires any transactions between a depository institution and an affiliate to be on terms and under circumstances that are substantially the same or at least as favorable to the depository institution or its subsidiary as comparable transactions with unaffiliated companies. See 12 U.S.C. § 371c-1(a)(1). The Bank is required to comply with section 23B and does not seek an exemption from the requirements of section 23B.

¹⁰ E.g., Letter from Ann E. Misback, Board Secretary, to Paul A. Adams (June 6, 2018), <https://www.federalreserve.gov/supervisionreg/legalinterpretations/fedreserseactint20180606.pdf>.

¹¹ See S. Rep. No. 536, 97th Cong., 2d Sess. 32 (1982) (noting that purchases of computers or buildings "are not the type of transactions that Section 23A is designed to cover.").

the OCC that it similarly finds that the exemption is (i) in the public interest and (ii) consistent with the purposes of Section 23A. Furthermore, the FDIC has informed the OCC that the exemption does not present an unacceptable risk to the Deposit Insurance Fund. Accordingly, the OCC hereby grants the requested exemption.

This action is conditioned on compliance by the Bank with all the commitments and representations it has made in connection with this exemption request. This action also is based on the specific facts and circumstances described in the Bank's correspondence and this letter.

Sincerely,

/s/

Michael J. Hsu
Acting Comptroller of the Currency