

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-1262]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board proposes to revise its 1980 interpretation of Regulation D (Reserve Requirements of Depository Institutions) setting forth criteria for the “bankers’ bank” exemption from reserve requirements. The interpretation sets forth the standards that the Board uses in applying the statutory and regulatory requirements for the bankers’ banks exemption to specific institutions. The proposed revisions would authorize the Board to determine, on a case by case basis, whether certain entities not already expressly authorized in the interpretation may become customers to a limited extent of bankers’ banks.

DATES: COMMENTS MUST BE RECEIVED BY SEPTEMBER 13, 2006.

ADDRESSES: You may submit comments, identified by Docket No. R-1262, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board’s web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board’s Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Heatherun Allison, Senior Counsel, (202) 452-3565; or Stephanie Martin, Associate General Counsel, (202)452-3198, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 19(b) of the Federal Reserve Act (Act) imposes reserve requirements on certain deposits and other liabilities of depository institutions. 12 U.S.C. § 461(b). The Board’s Regulation D, “Reserve Requirements of Depository Institutions” (12 CFR Part 204), implements Section 19(b). Section 19(b)(9) of the Act, commonly referred to as the “bankers’ bank exemption,” exempts from reserve requirements certain depository institutions that would otherwise be subject to them. Specifically, Section 19(b)(9) provides that reserve requirements “shall not apply with respect to any financial institution which—(A) is organized solely to do business with other financial institutions; (B) is owned primarily by the financial institutions with which it does business; and (C) does not do business with the general public.” 12 U.S.C. § 461(b)(9). Section 19(a) of the Act authorizes the Board to define the terms used in Section 19 and to prescribe such regulations as it may deem necessary to effectuate the purposes of the section and to prevent evasions thereof.

II. Issuance of Original Interpretation

In November 1980, the Board issued an interpretation of Regulation D specifying certain standards to be used in applying these requirements to specific institutions to determine whether they qualify for the bankers’ bank exemption. 12 CFR 204.121 (Interpretation). Under the Interpretation, an institution may be regarded as “organized solely to do business with other depository institutions even if, as an incidental part to [sic] its activities, it does business to a limited extent with entities other than depository institutions.” *Id.* In addition, a depository institution will be regarded as “being owned primarily by the institutions with which it does business” if “75 per cent or more of its capital is owned by other depository institutions . . . regardless of the type of depository institution.” *Id.*

Finally, the Interpretation states that a depository institution will be regarded as “not do[ing] business with the general public” if the depository institution satisfied two requirements. First, the depository institution must limit the range of customers with which it does business to: depository institutions; subsidiaries or organizations owned by depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are required at the request of the institution’s supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; and depository institution trade associations. Second, the depository institution’s loans to or investment in that range of customers (other than

depository institutions) cannot exceed 10 percent of total assets, and the extent to which it receives shares or deposits from or issues other liabilities to those same entities (other than depository institutions) cannot exceed 10 percent of total liabilities or net worth. Id.

III. Proposed Revisions

The Board proposes to amend the Interpretation to authorize the Board to expand the “range of customers” with which a bankers’ bank may permissibly do business. The Board proposes to add to the current list of non-depository institution customers with which bankers’ banks may do business the language “and such others as the Board may determine on a case by case basis consistent with the purposes of the Act and the bankers’ bank exemption.” Such customers would still be subject to the percentage limitations specified in the Interpretation relating to ownership and doing business (i.e., not more than 25 percent of bankers’ bank capital may be owned by non-depository institution customers and bankers’ bank business with non-depository institution customers may not exceed 10 percent of total assets/liabilities).

The Board believes that this amendment is appropriate in order to align the Interpretation more closely with current business and regulatory practices relating to bankers’ banks. The Board has received inquiries concerning whether certain non-depository institution entities not already listed in the Interpretation may permissibly do business with bankers’ banks, and it appears that amending the Interpretation to allow case by case determinations of such inquiries is appropriate at this time. The Board is not proposing at this time to specify any standards under which it would make such case by case determinations in order to provide institutions and the Board with flexibility in making such determinations, in keeping with the purposes of the Act and the bankers’ bank exemption. Specifically, the Board anticipates that such requests would be made only in cases where granting the request would facilitate the conduct of bankers’ banking business. Accordingly, the Board would not generally expect to exercise such authority for the purpose of expanding the range of non-depository institution customers of bankers’ banks to include the general public. The Board expects that, if this amendment is adopted, the Board should over time obtain increased experience with future requests, and based on that experience may find that proposing further amendments (including standards) to the Interpretation are warranted.

Comment is solicited on all aspects of the proposal.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R-1262 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov.

V. Solicitation of Comments Regarding Use of “Plain Language”

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use “plain language” in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rule is clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

VI. Initial Regulatory Flexibility Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Board has reviewed the proposed amendments to the Interpretation of Regulation D. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the objectives of the proposal. The Board is proposing revisions to its Interpretation of Regulation D in order to authorize the Board to determine, on a case by case basis, whether non-depository institutions that are not already listed in the Interpretation may be bankers’ bank customers without the bankers’ bank losing its exemption from reserve requirements. Section 19 of the Act was enacted to impose reserve requirements on certain deposits and other liabilities of depository institutions for monetary policy purposes. Section 19 exempts certain institutions from reserve requirements as “bankers’ banks” provided that the institutions meet the characteristics specified in the statute. Section 19 also authorizes the Board to promulgate such regulations as it may deem necessary to effectuate the purposes of the section. The Board believes that the proposed revisions to the Interpretation are within the Congress’ broad grant of authority to the Board to adopt provisions that carry out the purposes of Section 19 of the Act.

2. Small entities affected by the proposal. The number of small entities affected by this proposal is unknown. The proposal would only affect those entities, regardless of size, that choose to request a Board determination to permit them to do business with non-depository institutions not already specified in the Interpretation while maintaining their bankers’ bank exemption from reserve requirements.

3. Other federal rules. The Board believes that no federal rules duplicate, overlap, or conflict with the proposed revisions to the Interpretation.

4. Significant alternatives to the proposed revisions. The Board welcomes comment on any significant alternatives that would minimize the impact of the proposed rule on small entities.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506;

5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The proposed rule contains no requirements subject to the PRA.

12 CFR Chapter II

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, the Board is proposing to amend 12 CFR part 204 as follows:

PART 204 -- RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:
Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. The second sentence of paragraph (a)(2)(iii) of Section 204.121 is revised to read:

§ 204.121 Bankers' banks

* * * * *

(a) * * *

(2) * * *

(iii) * * * First, the range of customers with which the institution does business must be limited to depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are acquired at the request of the institution's supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; depository institution trade associations; and such others as the Board may determine on a case by case basis consistent with the purposes of the Act and the bankers' bank exemption. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 8, 2006.

Jennifer J. Johnson (signed)
Jennifer J. Johnson,
Secretary of the Board.