FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10608** January 6, 1993]

REGULATION O

— Proposed Amendment Regarding Insider Lending Limits

— Final Amendment Dealing with Lending Transactions by a Member Bank with its Parent Holding Company

To All Member Banks and Bank Holding Companies in the Second Federal Reserve District, and Others Concerned:

The Board of Governors of the Federal Reserve System has requested comment on a proposed amendment to its Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) in order to implement recent amendments to Section 22(h) of the Federal Reserve Act concerning aggregate insider lending limits. In that regard, the Board of Governors is proposing the adoption of three exceptions to those lending limits. Printed below is the text of the proposal, which has been reprinted from the *Federal Register;* comments thereon should be submitted by January 19, 1993, and may be sent to the Board, as specified in the notice, or to our Domestic Banking Department.

In addition, the Board has also amended Regulation O, effective December 17, 1992, in order to exclude from the coverage of that regulation lending transactions by a member bank with its parent holding company and that company's subsidiaries, inasmuch as those transactions are already governed by Section 23A of the Federal Reserve Act.

Enclosed — for member banks, bank holding companies, and others who maintain sets of the Board's regulations — is the text of the amendment to Regulation O, which has been reprinted from the *Federal Register* of December 23, 1992. Questions thereon should be directed to our Domestic Banking Department (Tel. No. 212-720-2181).

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0785]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Proposed rule with request for comment.

SUMMARY: The Board is proposing to revise Regulation O to implement recent amendments to section 22(h) of the Federal Reserve Act, contained in the Housing and Community Development Act of 1992. The Board is requesting public comment on three exceptions to the aggregate insider lending limit in Regulation O and is inviting suggestions on additional transactions that would meet the statutory exemptive criteria.

DATES: Comments should be submitted on or before January 19, 1993.
ADDRESSES: Comments, which should refer to Docket No. R-0785, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.
FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.
SUPPLEMENTARY INFORMATION: The Housing and Community Development Act of 1992 (HCDA), Pub. L. 102-550, 106 Stat. 3672 (1992), effective October 28, 1992, amended section 22(h) of the Federal Reserve Act (Act), 12 U.S.C. § 375b, to authorize the Board to adopt exceptions from the definition of "extension of credit" that pose minimal risk to the lending bank. The Board is proposing three exceptions to the aggregate lending limit in Regulation O (12 CFR part 215) to implement this amendment.

Background

The Federal Deposit Insurance

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(OVER)

Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102-242, 105 Stat. 2355 (1991), amended section 22(h) of the Act, effective May 18, 1992, by establishing a new 100 percent of capital limit on the aggregate amount of credit a member bank may extend to its insiders and their related interests as a class.[1] Unlike the single borrower lending limit under section 22(h), the new aggregate lending limit did not incorporate the exceptions from the loan to one borrower rule found in the National Bank Act. *See* 12 U.S.C. § 84. In addition, FDICIA eliminated the flexibility the Board previously had enjoyed under section 22(h) to exclude from coverage credit transactions that posed no risk to the bank. As a result, a bank was required to include certain loans when calculating its aggregate insider lending limit under Regulation O that it was not required to include when calculating its single borrower lending limit under Regulation O.

In order to reduce this inconsistency between the individual and aggregate lending limits in Regulation O, the Board recommended that Congress restore to the Board the ability to make exceptions to the lending limit. Congress responded in HCDA by granting the Board the authority to make exceptions by regulation to the definition of "extension of credit" in section 22(h) of the Act for transactions that the Board determines pose minimal risk. The legislative history of this provision states that the Board should make a "zero-based review" of all exceptions, rather than to adopt the exceptions under the National Banking Act as a whole. *See* 138 Cong. Rec. S17,914-15 (daily ed. Oct. 8, 1992).

Discussion of Issues

Under the concentration of credit rules of the National Bank Act, certain categories of loans or extensions of credit are deemed, as a result of the manner in which they are collateralized, to pose minimal risk of loss to a bank, and the ability of a national bank to engage in such transactions is made subject to relaxed quantitative limitations or is not subject to any quantitative limitations at all. *See* 12 U.S.C. § 84. The Board proposes to adopt three of these categories as exceptions from the definition of "extension of credit" as it applies to the aggregate lending limit at section 215.4(d) of Regulation O. These three categories are:

(1) Extensions of credit secured by obligations of the United States or other obligations fully guaranteed as to principal and interest by the United States;

(2) Extensions of credit to or secured by commitments or guarantees of the United States or its agencies; and

(3) Extensions of credit secured by a segregated deposit account with the lending bank.

The Board therefore proposes and requests public comment on these three categories as an initial group of exceptions to the aggregate lending limit under Regulation O. The Board also requests public comment on any other categories of extensions of credit which should be included, either with or without quantitative limitations, as additional exceptions to the aggregate lending limit.

By making these exceptions effective only with respect to the aggregate lending limit, the general prohibitions in Regulation O on extensions of credit to insiders, found in §§ 215.4(a) and (b), remain in effect as safeguards against abuse of these exceptions.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the objectives of, and legal basis for, the proposed rule (5 U.S.C. § 603(b)), are contained in the supplementary information above.

The Board's proposed rule imposes no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed rule will apply to all member banks, regardless of size. The proposed rule should not have a negative economic impact on small institutions. Instead, the rule should relieve their regulatory burden and will increase the ability of small institutions to make loans and other extensions of credit that pose little or no risk of loss to the member bank, and to attract and retain outside directors to whom such loans and other extensions of credit may be made in the same manner and to the same extent as they may be made to persons who are not insiders of the bank.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)), the Board is amending 12 CFR part 215, part A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 2 is revised to read as follows:

Authority: Sections 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)), 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi), and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.4 is amended by adding a new subparagraph (d)(3) to read as follows:

§ 215.4 General prohibitions.

(a) * * *

* * * * *

(d) * * *

(3) *Exceptions.* The general limit specified in paragraph (d)(1) of this section does not apply to:

(i) Extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States;

(ii) Extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(iii) Extensions of credit secured by a segregated deposit account in the member bank.

Board of Governors of the Federal Reserve System, December 17, 1992.

Williams W. Wiles,

Secretary of the Board.

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[1] FDICIA also authorized the Board by regulation to make exceptions to this limit, subject to certain requirements and restrictions, for member banks with less than $100 million in deposits. *See* 12 U.S.C. § 375b(5)(C). The Board has exercised this authority for the one-year period ending May 18, 1993. 12 CFR 215.4(d)(2).

Board of Governors of the Federal Reserve System

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks

AMENDMENT TO REGULATION O

(Effective December 17, 1992)

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0784]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation O to implement recent amendments to section 22(h) of the Federal Reserve Act, contained in the Housing and Community Development Act of 1992. The revision will provide that loans to a holding company parent and its affiliates are not subject to Regulation O inasmuch as these transactions are governed by section 23A of the Federal Reserve Act.

EFFECTIVE DATE: December 17, 1992.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Housing and Community Development Act of 1992 (HCDA), Pub. L. 102-550, 106 Stat. 3672 (1992), effective October 28, 1992, has amended section 22(h) of the Federal Reserve Act (Act), 12 U.S.C. § 375b, to exempt from the definition of "principal shareholder" any holding company of which the member bank is a subsidiary and any other subsidiary of that holding company. The Board is revising Regulation O (12 CFR part 215), effective December 17, 1992, to conform to the amendment.

Background

In response to a recommendation of the Board, Congress in HCDA amended section 22(h) to exclude from coverage under that section and Regulation O lending transactions by a member bank with its parent holding company and that company's subsidiaries, inasmuch as these transactions are governed comprehensively by section 23A of the Act.

The Board has revised the definition of "principal shareholder" in Regulation O to exclude from the definition of "principal shareholder" a "company of which a member bank is a subsidiary." This has the effect of excluding from the coverage of Regulation O loans to a company that owns, controls, or exercises a controlling influence over a member bank, as those relationships are defined in section 2(d) of the Bank Holding Company Act, as well as the related interests of such a parent bank holding company. *See* 12 CFR 215.2(n); 12 U.S.C. § 1841(d). Covered transactions between a member bank and its holding company and the other subsidiaries of the holding company continue to be governed by section 23A, which the Board believes comprehensively regulates such transactions.

Need for Final Rule Without Comment

The amendment of the statutory definition of "principal shareholder" was effective immediately upon enactment of HCDA, and required no action on the part of the Board to take effect. The amendment also removed the authority of the Board to maintain a definition of the term that did not contain the exception contained in section 22(h). The Board therefore believes that it is necessary to revise Regulation O in order to eliminate a prohibition on lending transactions that is not authorized by the Act, and to clarify that member banks may take immediate advantage of the recent amendment to section 22(h).

The Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The

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For Regulation O to be complete, retain:
1) Pamphlet effective May 18, 1992.
2) This slip sheet.

[Enc. Cir. No. 10608]

(OVER)

Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim amendment effective on December 17, 1992, without regard for the 30-day period provided for in 5 U.S.C. 553(d).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the objectives of, and legal basis for, the proposed rule (5 U.S.C. § 603(b)), are contained in the supplementary information above.

The Board's proposed rule imposes no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed rule will apply to all member banks, regardless of size. The proposed rule should not have a negative economic impact on small institutions. Instead, the rule should relieve the regulatory burden on all member banks, and will increase their ability to make loans and other extensions of credit, while such transactions remain subject to the comprehensive regulatory provisions of section 23A of the Act.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b) and section 955 of the Housing and Community Development Act of 1992 (Pub. L. No. 102-550, 106 Stat. 3895 (1992)), the Board is amending 12 CFR part 215, part A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 is revised to read as follows:

Authority: Sections 11(i), 22(g) and 22(h), Federal Reserve Act (12 U.S.C. 248(i), 375a, 375b(7)), 12 U.S.C. 1817(k)(3) and 1972(2)(F)(vi), and section 955 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, 106 Stat. 3895 (1992)).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.2 is amended by revising paragraph (l) to read as follows:

§ 215.2 Definitions.

* * * * *

(l)(1) *Principal shareholder* means a person (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual.

(2) A principal shareholder of a member bank includes:

(i) a principal shareholder of a company of which the member bank is a subsidiary, and

(ii) a principal shareholder of any other subsidiary of that company.

(3) A principal shareholder of a member bank does not include a company of which a member bank is a subsidiary.

Board of Governors of the Federal Reserve System, December 17, 1992.

William W. Wiles,

Secretary of the Board.

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