

§468. Restrictions on transactions with affiliates

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Covered transaction" means, with respect to an affiliate of a financial institution:

- (1) A loan or extension of credit to the affiliate;
- (2) A purchase of or an investment in securities issued by the affiliate;
- (3) A purchase of assets, including assets subject to agreement to repurchase, from the affiliate unless exempted by rule or order of the superintendent;
- (4) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person; or
- (5) The issuance of a guarantee, acceptance or letter of credit, including an endorsement or standby letter of credit, on behalf of an affiliate. [PL 1997, c. 398, Pt. I, §40 (NEW).]

B. "Transaction with an affiliate" means any transaction by a financial institution or its subsidiary with any person if any of the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate. [PL 1997, c. 398, Pt. I, §40 (NEW).]

C. "Affiliate" has the same meaning as given in section 131, subsection 1-A, except that a subsidiary of a financial institution is not an affiliate of that financial institution. [PL 1997, c. 660, Pt. A, §6 (NEW).]

[PL 1997, c. 660, Pt. A, §6 (AMD).]

2. Authorization. A financial institution and its subsidiaries may engage in a transaction with an affiliate subject to the following conditions:

A. The terms and circumstances, including credit standards, are substantially the same, or at least as favorable to the institution or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies; or [PL 1997, c. 398, Pt. I, §40 (NEW).]

B. In the absence of comparable transactions, the terms and circumstances, including credit standards, would in good faith be offered to, or would apply to, nonaffiliated companies. [PL 1997, c. 398, Pt. I, §40 (NEW).]

[PL 1997, c. 398, Pt. I, §40 (NEW).]

3. Covered transactions. In addition to the requirements of subsection 2, a financial institution and its subsidiaries may engage in a covered transaction with an affiliate subject to the following limitations:

A. In the case of an individual affiliate, the aggregate amount of covered transactions may not exceed 10% of the financial institution's total capital; [PL 1997, c. 398, Pt. I, §40 (NEW).]

B. In the case of all affiliates, the aggregate amount of covered transactions may not exceed 20% of the financial institution's total capital; [PL 1997, c. 398, Pt. I, §40 (NEW).]

C. A financial institution and its subsidiaries may not purchase a low-quality asset from an affiliate; [PL 1997, c. 398, Pt. I, §40 (NEW).]

D. Any covered transactions and any other transactions between a financial institution and its affiliates permitted by the superintendent pursuant to subsection 6 must be on terms and conditions that are consistent with safe and sound banking practices; and [PL 1997, c. 398, Pt. I, §40 (NEW).]

E. Each loan or extension of credit to, or guarantee, acceptance or letter of credit issued on behalf of, an affiliate by a financial institution or its subsidiary must be fully secured at the time of the transaction by eligible collateral. [PL 1997, c. 398, Pt. I, §40 (NEW).]

[PL 1997, c. 398, Pt. I, §40 (NEW).]

4. Prohibited transactions. The following transactions are prohibited.

A. A financial institution or its subsidiary may not purchase as fiduciary any securities or other assets from any affiliate unless this purchase is permitted under the instrument creating the fiduciary relationship, the purchase is pursuant to court order or the purchase is pursuant to law of the jurisdiction governing the fiduciary relationship. [PL 1997, c. 398, Pt. I, §40 (NEW).]

B. A financial institution or its subsidiary, whether acting as principal or fiduciary, may not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the financial institution, unless the purchase or acquisition of this security has been approved, before this security is initially offered for sale to the public, by a majority of the governing body of the financial institution who are not officers or employees of the financial institution or any affiliate of the financial institution. [PL 1997, c. 398, Pt. I, §40 (NEW).]

[PL 1997, c. 398, Pt. I, §40 (NEW).]

5. Violations. Any transaction made in violation of this section is subject to the remedies prescribed in section 465-A.

[PL 1997, c. 398, Pt. I, §40 (NEW).]

6. Rulemaking. The superintendent may, by rule or order, define or further define terms used in this section and establish limits, requirements or exceptions to this section other than those specified in this section, if the superintendent determines such action is necessary for the protection of depositors or the public and is consistent with the purposes of this section. For institutions organized pursuant to Part 12, the superintendent may, by rule or order, define or further define the terms used in this section and establish limits, requirements or exceptions to this section other than those specified in this section, if the superintendent determines that such action is consistent with the powers and limitations accorded institutions organized pursuant to Part 12. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[PL 1997, c. 660, Pt. A, §7 (AMD).]

SECTION HISTORY

PL 1997, c. 398, §140 (NEW). PL 1997, c. 660, §§A6,7 (AMD).

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