§ 223.41 provides credit protection to the nonaffiliate with respect to an obligation of an affiliate of the member bank is a guarantee by a member bank on behalf of an affiliate for purposes of this regulation. Such derivatives would include:

1. An agreement under which the member bank, in exchange for a fee, agrees to compensate the nonaffiliate for any default of the underlying obligation of the affiliate; and

2. An agreement under which the member bank, in exchange for payments based on the total return of the underlying obligation of the affiliate, agrees to pay the nonaffiliate a spread over funding costs plus any depreciation in the value of the underlying obligation of the affiliate.

Subpart E—Exemptions from the Provisions of Section 23A

§ 223.41 What covered transactions are exempt from the quantitative limits and collateral requirements?

The following transactions are not subject to the quantitative limits of §§ 223.11 and 223.12 or the collateral requirements of § 223.14. The transactions are, however, subject to the safety and soundness requirement of § 223.13 and the prohibition on the purchase of a low-quality asset of § 223.15.

(a) Parent institution/subsidiary institution transactions. Transactions with a depository institution if the member bank controls 80 percent or more of the voting securities of the depository institution or the depository institution controls 80 percent or more of the voting securities of the member bank.

(b) Transactions between a member bank and a depository institution owned by the same holding company. Transactions with a depository institution if the same company controls 80 percent or more of the voting securities of the member bank and the depository institution.

(c) Certain loan purchases from an affiliated depository institution. Purchasing a loan on a nonrecourse basis from an affiliated depository institution.

(d) Internal corporate reorganization transactions. Purchasing assets from an affiliate (including in connection with a transfer of securities issued by an affiliate to a member bank described in paragraph (a) of § 223.31), if:

(1) The asset purchase is part of an internal corporate reorganization of a holding company and involves the transfer of all or substantially all of the shares or assets of an affiliate or of a division or department of an affiliate;

(2) The member bank provides its appropriate Federal banking agency and the Board with written notice of the transaction before consummation, including a description of the primary business activities of the affiliate and an indication of the proposed date of the asset purchase;

(3) The member bank’s top-tier holding company commits to its appropriate Federal banking agency and the Board before consummation either:

(i) To make quarterly cash contributions to the member bank, for a two-year period following the member bank’s purchase, equal to the book value plus any write-downs taken by the member bank, of any transferred assets that have become low-quality assets during the quarter; or

(ii) To repurchase, on a quarterly basis, for a two-year period following the member bank’s purchase, at a price equal to the book value plus any write-downs taken by the member bank, any transferred assets that have become low-quality assets during the quarter;

(4) The member bank’s top-tier holding company complies with the commitment made under paragraph (d)(3) of this section;

(5) A majority of the member bank’s directors reviews and approves the transaction before consummation;

(6) The value of the covered transaction (as computed under this part), when aggregated with the value of any other covered transactions (as computed under this part) engaged in by the member bank under this exemption during the preceding 12 calendar months, represents less than 10 percent of the member bank’s capital stock and surplus (or such higher amount, up to 25 percent of the member bank’s capital stock and surplus, as may be permitted by the member bank’s appropriate Federal banking agency after conducting a review of the member bank’s financial condition and the
quality of the assets transferred to the
member bank); and
(7) The holding company and all its
subsidiary member banks and other
subsidiary depository institutions are
well capitalized and well managed and
would remain well capitalized upon
consummation of the transaction.

§ 223.42 What covered transactions are
exempt from the quantitative limits,
collateral requirements, and low-
quality asset prohibition?

The following transactions are not
subject to the quantitative limits of
§§ 223.11 and 223.12, the collateral re-
quirements of § 223.14, or the prohibi-
tion on the purchase of a low-quality
asset of § 223.15. The transactions are,
however, subject to the safety and soundness requirement of § 223.13.

(a) Making correspondent banking de-
posits. Making a deposit in an affiliated
depository institution (as defined in
section 3 of the Federal Deposit Insur-
ance Act (12 U.S.C. 1813)) or affiliated
foreign bank that represents an ongo-
ing, working balance maintained in the
ordinary course of correspondent busi-
ness.

(b) Giving credit for uncollected items.
Giving immediate credit to an affiliate
for uncollected items received in the
ordinary course of business.

(c) Transactions secured by cash or U.S.
government securities—(1) In general. En-
gaging in a credit transaction with an
affiliate to the extent that the trans-
action is and remains secured by:
(i) Obligations of the United States
or its agencies;
(ii) Obligations fully guaranteed by
the United States or its agencies as to
principal and interest; or
(iii) A segregated, earmarked deposit
account with the member bank that is
for the sole purpose of securing credit
transactions between the member bank
and its affiliates and is identified as
such.

(2) Example. A member bank makes a
$100 non-amortizing term loan to an af-
fliate secured by U.S. Treasury securi-
ties with a market value of $50 and real
estate with a market value of $75. The
value of the covered transaction is $50.
If the market value of the U.S. Treas-
ury securities falls to $45 during the
life of the loan, the value of the cov-
ered transaction would increase to $55.

(d) Purchasing securities of a servicing
affiliate. Purchasing a security issued
by any company engaged solely in pro-
viding services described in section
4(c)(1) of the Bank Holding Company
Act (12 U.S.C. 1843(c)(1)).

(e) Purchasing certain liquid assets.
Purchasing an asset having a readily
identifiable and publicly available mar-
ket quotation and purchased at or
below the asset’s current market
quotation. An asset has a readily iden-
tifiable and publicly available market
quotation if the asset’s price is quoted
routinely in a widely disseminated pub-
lication that is readily available to the
general public.

(f) Purchasing certain marketable secur-
ities. Purchasing a security from a se-
curities affiliate, if:

(1) The security has a "ready mar-
ket," as defined in 17 CFR 240.15c3-
1(c)(1)(ii);

(2) The security is eligible for a State
member bank to purchase directly,
subject to the same terms and condi-
tions that govern the investment ac-
tivities of a State member bank, and
the member bank records the trans-
action as a purchase of a security for
purposes of its Call Report, consistent
with the requirements for a State
member bank;

(3) The security is not a low-quality
asset;

(4) The member bank does not pur-
chase the security during an under-
writing, or within 30 days of an under-
writing, if an affiliate is an under-
writer of the security, unless the secu-
rities is purchased as part of an issue of
obligations of, or obligations fully
guaranteed as to principal and interest
by, the United States or its agencies;

(5) The security’s price is quoted rou-
tinely on an unaffiliated electronic
service that provides indicative data
from real-time financial networks, pro-
vided that:

(i) The price paid by the member
bank is at or below the current market
quotation for the security; and

(ii) The size of the transaction exe-
cuted by the member bank does not
cast material doubt on the appropriaten-
ess of relying on the current market
quotation for the security; and

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