

Transactions with Affiliates and Insiders

Association	City	State	Docket #
Affiliate/Insider			
Description of Transaction			

*Instructions:* Use this Checklist to review all types of transactions with affiliates and insiders. Use the Checklist in conjunction with the regulations since the checklist does not include all of the definitions, etc. Follow the Checklist until you reach a **STOP**.

Is the transaction between the savings association or its subsidiary and an insider? (12 C.F.R. Section 563.43)

- |   |  |
|---|--|
| <input type="checkbox"/> Yes<br>Transaction may be subject to Section 563.43 (Sections 22(g) or 22(h) of the FRA)<br>⇨ If the insider is a company, go to Part A<br>⇨ If the insider is not a company, go to Part B | <input type="checkbox"/> No<br>Transaction may be subject to Sections 563.41 and 563.42 ⇨ Go to Part A |
|---|--|

**PART A (563.41 and 563.42)**

*Note:* Sections 563.41 and 563.42 parallel Sections 23A and 23B of the Federal Reserve Act.

- Is the transaction between the association or its subsidiary and a company that conforms to the definition of an affiliate in Section 563.41(b)(1) and (2)?
 

<input type="checkbox"/> Yes Transaction is with an affiliate as defined in Section 563.41 – If transaction is a loan ⇨ Go to Next Step – If transaction is not a loan ⇨ Go to Step 3	<input type="checkbox"/> No Transaction is not subject to the affiliate restrictions in Sections 563.41 and 563.42 ⇨ Go to Part B (563.43)
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- Does the affiliate engage only in activities permissible for bank holding companies as outlined in 12 C.F.R. Section 584.2-2?
 

<input type="checkbox"/> Yes Transaction may be subject to Sections 563.41 and 563.42 ⇨ Go to Step 4	<input type="checkbox"/> No Transaction is a violation of Section 563.41(a)(3) ⇨ STOP
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- Does the transaction involve the purchase of, or investment in, securities issued by an affiliate that is not a subsidiary of the association?
 

<input type="checkbox"/> Yes Transaction is a violation of Section 563.41(a)(4) ⇨ STOP	<input type="checkbox"/> No Transaction may be subject to Sections 563.41 and 563.42 ⇨ Go to Next Step
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4. Is the transaction a "covered transaction" pursuant to Section 563.41(b)(7)?
- |   |  |
|---|--|
| <input type="checkbox"/> Yes<br>Transaction is a covered transaction as defined in Section 563.41(b)(7) ⇨ Go to Next Step | <input type="checkbox"/> No<br>Transaction is not subject to the affiliate restrictions in Section 563.41 ⇨ Go to Step 8 |
|---|--|
5. Is the transaction exempt pursuant to Section 563.41(d)?
- |   |  |
|---|--|
| <input type="checkbox"/> Yes<br>Transaction must still be consistent with safe and sound banking practices ⇨ Go to Step 8 | <input type="checkbox"/> No<br>Transaction is subject to quantitative restrictions ⇨ Go to Next Step |
|---|--|
6. Does the transaction meet the quantitative restrictions of Section 563.41(a)(1)?
- |   |  |
|---|--|
| <input type="checkbox"/> Yes<br>Transaction meets the quantitative restrictions ⇨ Go to Next Step | <input type="checkbox"/> No<br>Transaction is in violation of Section 563.41 ⇨ Go to Next Step |
|---|--|
7. Does the transaction meet the qualitative restrictions of Sections 563.41(a)(5) and 563.41(c)?
- |  |  |
|--|--|
| <input type="checkbox"/> Yes<br>Transaction meets the qualitative restrictions ⇨ Go to Next Step | <input type="checkbox"/> No<br>Transaction is in violation of Section 563.41 ⇨ Go to Next Step |
|--|--|
8. Is the transaction covered by Section 563.42(a)(2)?
- |  |   |
|--|---|
| <input type="checkbox"/> Yes<br>Transaction is subject to the qualitative restrictions of Section 563.42 ⇨ Go to Next Step | <input type="checkbox"/> No<br>Transaction is not subject to Section 563.42 ⇨ Go to Part B (Section 563.43) |
|--|---|
9. Is the transaction prohibited by Section 563.42(b)?
- |   |   |
|---|---|
| <input type="checkbox"/> Yes<br>Transaction is in violation of Section 563.42 ⇨ Go to Part B (Section 563.43) | <input type="checkbox"/> No<br>Transaction is in compliance with Section 563.42 ⇨ Go to Next Step |
|---|---|
10. Is the transaction on terms substantially the same as those offered to nonaffiliated companies?
- |  |  |
|--|--|
| <input type="checkbox"/> Yes<br>Transaction is in compliance with the qualitative restrictions of Section 563.42 ⇨ Go to Part B (Section 563.43) | <input type="checkbox"/> No<br>Transaction is in violation of the qualitative restrictions of Section 563.42 ⇨ Go to Part B (Section 563.43) |
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**PART B (563.43)**

*Note:* This part tracks the portions of 563.43 and Reg. O that are authorized by 22(h) of the FRA.

1. Is the transaction an extension of credit as defined by Section 215.3 of Reg. O?

Yes

Transaction may be subject to the restrictions of Section 563.43

- overdraft ⇨ Go to Step 13
- any other extension of credit
- ⇨ Go to Next Step

No

Transaction is not subject to the restrictions of Section 563.43 ⇨ STOP

2. Is the extension of credit with an insider? (Do not consider exclusions or special provisions)

Yes

Transaction must be reviewed under Section 22(h).

- executive officer ⇨ Go to Step 3
- related interest ⇨ Go to Step 4
- principal shareholder ⇨ Go to Step 6
- director ⇨ Go to Step 9

No

Transaction is not subject to the restrictions of Section 563.43 ⇨ STOP

*Note:* If the insider holds more than one position, follow directions for the first applicable step.

3. Is the individual excluded from the definition of an executive officer and was this exclusion appropriate? (Section 215.2(e))

Yes

Transaction is not subject to the restrictions of Section 563.43 ⇨ STOP

No

Transaction may be subject to the restrictions of Section 563.43 ⇨ Go to Step 9

4. Does an insider have control over a company as defined in Section 215.2(c)(1)?

Yes

Transaction may be subject to the restrictions of Section 563.43 ⇨ Go to Next Step

No

Transaction is not subject to the restrictions of Section 563.43 ⇨ STOP

5. Does this control relationship result in a rebuttable control determination?

Yes

The control determination may be rebutted  
⇨ Go to Step 7

No

Transaction is subject to the restrictions of Section 563.43  
⇨ Go to Step 9

6. Does a person or company meet the requirements of a principal shareholder? (Parent holding companies are excluded from the definition of principal shareholder.)

Yes

Individual/company is an insider  
⇨ Go to Step 9

No

Transaction is not subject to the restrictions of Section 563.43 ⇨ STOP

7. Has the individual rebutted the presumption?

Yes

Individual contends he is not in a control position ⇨ Go to Next Step

No

Individual is considered an insider ⇨ Go to Step 9

8. Was the rebuttal accepted by the OTS?

Yes

Individual is not considered an insider ⇨ STOP

No

Individual is considered an insider ⇨ Go to Step 9

9. Does the transaction meet the individual lending limitations set forth at Section 215.4(c)?

Yes

Transaction meets individual lending limitation ⇨ Go to Next Step

No

Transaction is in violation of Section 563.43 ⇨ Go to Next Step

*Note:* Transactions with related interests should be aggregated with other extensions of credit to its insider.

10. Does the transaction meet the aggregate lending limitations set forth at Section 215.4(d)?

Yes

Aggregate limitations are met ⇨ Go to Next Step

No

Transaction is a violation of Section 563.43 ⇨ Go to Step 11

11. Did the transaction meet the board of directors prior approval requirements at Section 215.4(b)? (if unnecessary, check yes)

Yes

Transaction meets prior approval requirements ⇨ Go to Next Step

No

Transaction is a violation of Section 563.43 ⇨ Go to Next Step

12. Does the transaction meet the qualitative requirements of Section 215.4(a)?

Yes

Transaction meets qualitative requirements  
– executive officer ⇨ Go to Part C  
– director, principal shareholder or related interest ⇨ STOP

No

Transaction is a violation of Section 563.43  
– executive officer ⇨ Go to Part C  
– director, principal shareholder or related interest ⇨ STOP

13. Is the overdraft to a principal shareholder, or related interest of an insider?

Yes

Transaction is permissible ⇨ Go to Next Step

No

Transaction may be subject to Section 215.4(e) ⇨ Go to Next Step

14. Is the overdraft to an executive officer?

Yes

Transaction is subject to Section 215.4(e) ⇨ Go to Next Step

No

Transaction may be subject to Section 215.4(e) ⇨ Go to Step 16

15. Has the association excluded the individual from being considered an executive officer for purposes of Reg. O and was the exclusion appropriate? (Section 215.2(e))

Yes

Transaction is permissible ⇨ STOP

No

Transaction is subject to Section 215.4(e)  
⇨ Go to Step 18

16. Is the overdraft to a director?

Yes

Transaction is subject to Section 215.4(e)  
⇨ Go to Next Step

No

Transaction is permissible  
⇨ STOP

17. Has the association excluded the individual from being considered a director of an affiliate for purposes of Reg. O and was the exclusion appropriate? (Section 215.2(d))

Yes

Transaction is permissible  
⇨ STOP

No

Transaction is subject to Section 215.4(e)  
⇨ Go to Next Step

18. Does the overdraft meet the limitations of Section 215.4(e)?

Yes

Transaction is in compliance ⇨ STOP

No

Transaction is in violation of Section 563.43 ⇨ STOP

### PART C (563.43)

*Note:* This part tracks the portions of 563.43 and Reg. O that are authorized by section 22(g) of the FRA (12 C.F.R. Sections 215.5, 215.9 and 215.10).

1. Is the extension of credit to an executive officer of the savings association?

Yes

Transaction is covered by Section 22(g)  
⇨ Go to Next Step

No

Transaction is not subject to Section 22(g)  
⇨ STOP

2. Has the association extended credit to the executive officer for the purpose of financing the education of the executive officer's children?

Yes

Transaction is in compliance with Section 215.5(c)  
⇨ Go to Step 7

No

Transaction may be subject to the limitations of Section 215.5(c)(4) ⇨ Go to Next Step

3. Has the association extended credit to the executive officer to finance the purchase, construction, maintenance, or improvement of a residence of the executive officer *and* the extension of credit is secured by a first lien on the residence *and* the residence is owned (or expected to be owned after the extension of credit) by the executive officer?

Yes

Transaction is in compliance with Section 215.5(c) ⇨ Go to Step 7

No

Transaction is subject to the limitations of Section 215.5(c)(4) ⇨ Go to Next Step

4. Is the extension of credit secured as described in Section 215.4(d)(3)(i)(A) through (d)(3)(i)(C)?

- |  |   |
|--|---|
| <input type="checkbox"/> Yes<br>Transaction is in compliance with 215.5(c)<br>⇨ Go to Step 7 | <input type="checkbox"/> No<br>Transaction is subject to the limitations of Section 215.5(c)(4) ⇨ Go to Next Step |
|--|---|

5. Does the extension of credit, when added to all other extensions of credit to the executive officer (except those described in questions 2, 3 and 4) exceed the greater of 2.5% of the thrift's capital and unimpaired surplus or \$25,000?

- |  |   |
|--|---|
| <input type="checkbox"/> Yes<br>Transaction is in violation of Section 215.5(c)(4)<br>⇨ Go to Step 7 | <input type="checkbox"/> No<br>Transaction may be in compliance with Section 215.5(c)(4)<br>⇨ Go to Next Step |
|--|---|

6. Does the extension of credit, when added to all other extensions of credit to the executive officer (except those described in questions 2, 3 and 4) exceed \$100,000?

- |   |   |
|---|---|
| <input type="checkbox"/> Yes<br>Transaction is in violation of Section 215.5(c)(3)<br>⇨ Go to Next Step 215.5(c)(4) | <input type="checkbox"/> No<br>Transaction is in compliance with Section 215.5(c)(4)<br>⇨ Go to Next Step |
|---|---|

*Note:* You should aggregate together the total amount of all extensions of credit:

- To partnerships in which one or more of the thrift's executive officers are partners, and either individually or together hold a majority interest.
- To the individual executive officers.

7. Has the executive officer met the reporting requirements and limitations of Sections 215.5(d)?

- |   |  |
|---|--|
| <input type="checkbox"/> Yes<br>Transaction is in compliance with Sections 215.5(d)<br>⇨ STOP | <input type="checkbox"/> No<br>Transaction is in violation of Section 215.5(d)<br>⇨ STOP |
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Exemptions/Exclusions/Special Provisions

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Violations Noted

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