

## Operating subsidiary

## Service corporation

(l) How do the transactions with affiliates (TWA) regulations (§ 563.41 of this chapter) apply?

(1) Section 563.41 of this chapter explains how TWA applies. Generally, an operating subsidiary is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. A non-affiliate operating subsidiary is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.

(2) Section 563.41 of this chapter explains how TWA applies. Generally, a service corporation is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. If a savings association directly or indirectly controls a service corporation and the service corporation is not otherwise an affiliate under § 563.41 of this chapter, the service corporation is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.

## PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 3. The authority citation for part 563 continues to read as follows:

**Authority:** 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

■ 4. Revise § 563.41 to read as follows:

### § 563.41 Transactions with affiliates.

(a) *Scope.* (1) This section implements section 11(a) of the Home Owners' Loan Act (12 U.S.C. 1468(a)). Section 11(a) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c1) to every savings association in the same manner

and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes OTS to impose additional restrictions on a savings association's transactions with affiliates.

(2) For the purposes of this section, "savings association" is defined at section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and also includes any savings bank or any cooperative bank that is a savings association under 12 U.S.C. 1467a(l). A non-affiliate subsidiary of a savings association as described in paragraph

(b)(11) of this section is treated as part of the savings association.

(b) *Sections 23A and 23B of the FRA/Regulation W.* A savings association must comply with sections 23A and 23B of the Federal Reserve Act and the implementing regulations at 12 CFR part 223 (Regulation W) as if it were a member bank, except as described in the following chart. In addition, a savings association should read all references to "the Board" or "appropriate federal banking agency" to refer only to "OTS," except for references at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.14(c)(4), 223.43, and 223.55.

Provision of Regulation W	Application
(1) 12 CFR 223.1—Authority, purpose, and scope .....	Does not apply. Section 563.41(a) addresses these matters.
(2) 12 CFR 223.2(a)(8)—"Affiliate" includes a financial subsidiary .....	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(3) 12 CFR 223.2(a)(12)—Determination that "affiliate" includes other types of companies.	Read to include the following statement: "Affiliate also includes any company that OTS determines, by order or regulation, to present a risk to the safety and soundness of the savings association."
(4) 12 CFR 223.2(b)(1)(ii)—"Affiliate" includes a subsidiary that is a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(5) 12 CFR 223.3(d)—Definition of "capital stock and surplus." .....	Does not apply. Capital stock and surplus means "unimpaired capital and unimpaired surplus," as defined in 12 CFR 560.93(b)(11).
(6) 12 CFR 223.3(h)(1)—Section 23A covered transactions include an extension of credit to the affiliate.	Read to incorporate § 563.41(c)(1), which prohibits loans or extensions of credit to an affiliate, unless the affiliate is engaged only in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter.
(7) 12 CFR 223.3(h)(2)—Section 23A covered transactions include a purchase of or investment in securities issued by an affiliate.	Read to incorporate § 563.41(c)(2), which prohibits purchases and investments in securities issued by an affiliate, other than with respect to shares of a subsidiary.
(8) 12 CFR 223.3(k)—Definition of "depository institution." .....	Read to include the following statement: "For the purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the depository institution."
(9) 12 CFR 223.3(p)—Definition of "financial subsidiary." .....	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(10) 12 CFR 223.3(w)—Definition of "member bank." .....	Read to include the following statement: "Member bank also includes a savings association. For purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the savings association."