## GOLD

### Statement of Policy

On December 31, 1974, Public Law 93-373, which removes the restrictions on a person "purchasing, holding, selling, or otherwise dealing with gold," becomes effective. The word "person" in the Act has been construed to include banks. Thus, to the extent authorized by State law, State nonmember banks will be permitted to deal in gold.

Trading in any commodity, including gold, is a highly speculative activity. The past experience of individuals and companies in the commodities markets indicates that, at minimum, commodities trading is a very risky activity for the novice. In the case of gold, moreover, the more than forty year old prohibition against U.S. citizens holding and trading in gold has meant that few persons have even a nominal degree of expertise in such activity. The Corporation therefore believes that insured State nonmember banks should consider confining their trading in gold to purchases and sales on a consignment or agency basis. Irrespective of the manner in which an insured nonmember bank intends to deal in gold, the Corporation should be notified of such intention.[1]

Insured nonmember banks which are considering dealing in gold for their own accounts should carefully evaluate the experience and ability of their present staffs in this regard before proceeding. Further, such banks should bear in mind that gold ownership exposes them to possible loss due to adverse fluctuations in market value. In order to minimize such exposure, banks may find it necessary to conduct limited trading in gold futures for hedging purposes. Banks considering holding inventories of their own gold are reminded that gold bears no yield or interest and that any such inventory should be reflected as "other assets" and should be periodically adjusted to current market value.

Even the sale of gold by a bank to its customers on a consignment basis, while not subjecting the bank to possible losses due to fluctuations in the price of gold, entails certain other risks of which insured State nonmember banks should be aware. These problems can also arise with respect to sales of a bank's own gold. First, banks may bear the risk of any loss with respect to gold which they hold, even when it is held on consignment. Banks considering holding gold should therefore evaluate the adequacy of their present security arrangements. Second, gold purchase or consignment agreements entered into by a bank may not provide it with the right to resell to the dealer any gold which the bank's customers ask the bank to repurchase. Thus a bank might be forced to refrain from repurchasing gold which it had previously sold to its customers. Third, banks should attempt to minimize the possibility of receiving, and ultimately selling, bogus gold by entering into agreements only with responsible, reputable dealers. In this connection, insured nonmember banks should be especially wary of proposals which purport to offer gold to them at or below the current market price. They should pay particular attention to the degree of fineness (purity) of the gold so offered. The inadvertent sale of gold which does not conform to a bank's representations may well expose the bank to unfavorable publicity or legal action. Fourth, banks engaging to repurchase gold from their customers should consider retaining possession of the gold pursuant to a sale/safekeeping agreement. Unless the gold has constantly remained in the possession or control of the bank, it may be necessary for the bank to acquire or utilize facilities for weighing and assaying gold it plans to repurchase.

Many insured nonmember banks, including banks which do not choose to offer gold for sale to their customers, may find themselves engaged in safekeeping arrangements for gold owned by their customers. Here too, banks contemplating providing such services

[1] Insured nonmember banks intending to trade in gold should submit written notice of such intent to the appropriate regional office of the Corporation at least 10 business days prior to the initiation of such trading. Such notice should include all information the bank deems relevant to its proposed activity including whether the bank will be trading for its own account or solely on an agency or consignment basis, the projected amount and purpose of any such trading, the experience of those individuals who will be engaged in the trading, insurance arrangements which will be in effect and, where applicable, the relation of the bank's capital and earnings to the projected amount of gold that the bank will acquire for its own account.

should evaluate the adequacy of their security arrangements. Where the size or amount of the gold received cannot feasibly be held in normal safe deposit facilities, banks should take care to segregate such gold in their vaults and to issue receipts to their customers therefor. Such receipts, whether issued in connection with a sale/safekeeping transaction or otherwise, should be issued in non-negotiable form and should refer to a specifically identifiable amount of gold. Each receipt and any advertisement of gold safekeeping services should also state clearly and conspicuously that the gold held pursuant to the safekeeping arrangement is not a deposit insured by FDIC.

It is the opinion of the Secretary of the Treasury that Public Law 93-373 did not repeal or alter the so-called Gold Clause Resolution of 1933 (31 U.S.C. 463). The Resolution prohibits any contractual provision which purports to give the obligee the option of requiring payment of the obligation in money or a specified amount of gold. Deposit contracts which purport to give the bank's customer such an option are therefore rendered legally unenforceable by the terms of the Gold Clause Resolution. Contracts specifically payable only in gold may be similarly unenforceable where the parties to the contract view the gold as a medium of discharging a debt, such as a deposit liability, rather than as a commodity to be traded. Needless to say, sound banking practice dictates that insured nonmember banks not enter into legally unenforceable deposit contracts. Conversely, while contracts entered into by a bank treating gold as a commodity, rather than a currency, such as futures contracts, may be valid obligations of the bank, they do not give rise to "deposits" insured by FDIC.

Insured nonmember banks should exercise care so that the aggregate amount of gold held as collateral for loans does not become unduly large. Adequate margin requirements on such loans (such as valuing the gold at 50 percent of the current market price) should be maintained and banks should revalue gold held as collateral at least monthly. Banks considering making loans for the purpose of enabling the borrower to purchase gold should bear in mind that such loans, unless made for industrial or commercial purposes, are speculative and nonproductive. As in the cases of the sale and safekeeping of gold, banks should consider the adequacy of their facilities for authenticating and protecting gold held as collateral for loans.

In sum, the Corporation believes that insured nonmember banks should move cautiously in regard to dealing in gold. Those banks offering gold for sale should consider possible adverse customer reaction if the price of gold drops and endeavor to warn their customers of the highly speculative nature of such an investment. Banks should also check their security systems for compliance with the Corporation's Part 326 and any subsequent revisions thereof.

Similar policy statements are being issued by the other Federal bank regulatory agencies with respect to banks under their jurisdictions.

*Effective date.* The policy enunciated in the preceding statement shall be effective on the date of its publication [December 18, 1974].

By order of the Board of Directors, December 9, 1974.

*[Source: 39 Fed. Reg. 43765, December 18, 1974]*

[The page following this is 5039.]