

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 77-147
December 30, 1977

PROPOSED INTERPRETATION OF REGULATION A

TO THE CHIEF EXECUTIVE OFFICER
OF THE MEMBER BANK ADDRESSED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System has proposed for comment an interpretation of its Regulation A that would extend the kinds of bankers' acceptances available for discount by Federal Reserve Banks.

Printed on the following pages is the text of the proposal as published in the Federal Register, December 21, 1977.

Comments on the proposed interpretation should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received no later than February 1, 1978. All materials should include the Docket No. R-0135.

Sincerely yours,

Robert H. Boykin

First Vice President

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FEDERAL RESERVE SYSTEM

[Reg. A—Docket No. R-0135]

[12 CFR Part 201]

PROPOSED INTERPRETATION OF REGULATION A

Eligible Bankers' Acceptances

AGENCY: Board of Governors of the
Federal Reserve System.

ACTION: Proposed Interpretation.

SUMMARY: This proposed interpretation concerning extensions of credit by Federal Reserve Banks provides that a bankers' acceptance secured by a field warehouse receipt covering readily marketable staples is eligible for discount by a Federal Reserve Bank despite the fact that the warehouseman is an employee of the owner of the goods. This proposed interpretation, if adopted, would reverse a current interpretation adopted by the Board in 1933.

The Board has concluded that a review of the interpretation is desirable in light of the changes in commercial practice and commercial law in the 44 years since the publication of the current interpretation.

DATE: Comments must be received before February 1, 1978.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should include the Docket Number R-0135.

FOR FURTHER INFORMATION CONTACT:

Don C. Hammer, Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3611.

SUPPLEMENTARY INFORMATION:

(1) The Board has been asked to review its 1933 interpretation concerning the eligibility for discount of bankers' acceptances secured by field warehouse receipts. Under that interpretation, such acceptances were determined to be not eligible for discount because the actual custodian of the goods was so closely identified with the owner of the goods that, in the Board's view, the lending bank's security might be impaired. The Board has concluded that a review of the Interpretation is desirable in light of the changes in commercial practice and commercial law in the 44 years since the publication of the current interpretation. Furthermore, this matter is of significance to member banks because, under the Board's Regulation D, the sale of such acceptances by member banks could result in additional reserve liability

for the member bank if the acceptance sold were ineligible for discount.

(2) To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, or comments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 1, 1978. All material submitted should include the docket number R-0135. Such material will be made available for inspection and copying upon request except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR § 261.6(a)).

(3) This action is proposed pursuant to the Board's authority under section 13 of the Federal Reserve Act.

PROPOSED INTERPRETATION OF REGULATION A

The Board has been asked to review an interpretation it issued in 1933 concerning the eligibility for rediscount by a Federal Reserve Bank of bankers' acceptances issued against filed warehouse receipts where the custodian of the goods is a former employee of the borrower. (¶ 1445 Published Interpretations, 1933 Bulletin 188) The Board determined at that time that the acceptances were not eligible because:

such receipts do not comply with the requirement of section 13 of the Federal Reserve Act that a banker's acceptance be "secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples," nor with the requirement of section XI of the Board's Regulation A that it be "secured at the time of acceptance by a warehouse, terminal, or other similar receipt, conveying security title to such staples, issued by a party independent of the customer."

The requirement that the receipt be "issued by a party independent of the customer" was deleted from Regulation A in 1973, and thus the primary issue for the Board's consideration is whether a field warehouse receipt is a document "securing title" to readily marketable staples.

While bankers' acceptances secured by field warehouse receipts are rarely offered for rediscount or as collateral for an advance, the issue of "eligibility" is still significant. If an ineligible acceptance is sold by a member bank, the proceeds are deemed to be "deposits" under section 204.1(f) of Regulation D and are subject to reserve requirements.

In reviewing this matter, the Board has taken into consideration the changes that have occurred in commercial law and practice since 1933. Modern commercial law, embodied in the Uniform Commercial Code, refers to perfecting "security interests" rather than "securing title" to goods. The Board believes that if, under State law, the field warehousing arrangement provides the lender with a perfected security interest in the goods, the "securing title" requirement of the Federal Reserve Act is satisfied.

Under the U.C.C. evidence of an agree-

ment between the secured party and the debtor must exist before a security interest can attach. This agreement may be evidenced by: (1) a written security agreement signed by the debtor, or (2) the collateral being placed in the possession of the secured party or his agent (U.C.C. § 9-203). If the security interest is based on a written security agreement, it can only be perfected by the filing of a financing statement. (U.C.C. § 9-302) If the security interest is based on possession of the collateral by the secured party, then perfection can be achieved by: (1) having warehouse receipts issued in the name of the secured party; (2) notifying the bailee of the secured party's interest; or (3) having a financing statement filed. (U.C.C. § 9-304(3))

If the field warehousing operation is properly conducted, a security interest is created by the secured party's agent taking possession of the collateral and is perfected either by issuance of warehouse receipts in the name of the secured party (the lending bank) or by notification to the bailee (the field warehouseman) of the secured party's interest. Therefore, warehouse receipts issued pursuant to a bona fide field warehousing operation satisfy the legal requirements of section 13 of the Federal Reserve Act. Moreover, in a properly conducted field warehousing operation, the warehouse manager will be trained, bonded, supervised and audited by the field warehousing company. This procedure insures that he will not be impermissibly controlled by his former (or sometimes present) employer, the borrower, even though he may look to the borrower for reemployment at some future time.

If the warehousing operation is not conducted properly, however, and the manager remains under the control of the borrower, the security interest may be lost. In such instances, the security interest should be based upon a written security agreement between the borrower and the secured party, and perfection should be accomplished by the filing of a financing statement. It has been represented to the Board that a written security agreement is almost always entered into as an adjunct to establishment of a field warehousing operation and that a financing statement is, in fact, often filed. Therefore, if a bankers' acceptance secured by a field warehouse receipt is actually offered for rediscount or as collateral for an advance, the Reserve Bank may in its discretion require proof of the existence of a written security agreement and it may require that a financing statement be filed.

It has also been represented to the Board that most established field warehousing companies maintain large fidelity bonds and legal liability insurance. If the Reserve Bank desires additional protection, it may require proof of the existence of insurance coverage in an amount adequate to cover any loss.

This interpretation is based on facts that have been presented in regard to

field warehousing operations conducted by established, professional field warehouse companies, and it does not necessarily apply to ad hoc warehousing operations. Thus ¶ 1430 and ¶ 1440 of the Published Interpretation (1918 Bulletin 31 and 1918 Bulletin 862) maintain their validity with regard to corporations formed for the purpose of conducting limited field warehousing operations. Furthermore, the prohibition contained in ¶ 1435 Published Interpretations (1918 Bulletin 634) that "the borrower shall not have access to the premises and shall exercise no control over the goods stored" retains its validity, except that access for inspection purposes is still permitted under ¶ 1450 (1926 Bulletin 666). The reason for the acceptance transaction must be proper and cannot be for speculation (¶ 1400, 1919 Bulletin 858) or for the purpose of furnishing working capital (¶ 1405, 1922 Bulletin 52).

This interpretation represents a reversal only of the previous ¶ 1445 of the Published Interpretations (1933 Bulletin 188), and is not intended to affect any other Board interpretation regarding field warehousing.

By order of the Board of Governors,
December 12, 1977.

THEODORE E. ALLISON,
Secretary of the Board

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