FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 83-23
February 17, 1983

INELIGIBLE BANKERS' ACCEPTANCES

PROPOSED RULEMAKING

RULES REGARDING DELEGATION OF AUTHORITY

FINAL RULE

TO ALL MEMBER BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System has published for comment several proposals regarding bankers' acceptances in connection with the recently enacted Bank Export Services Act (BESA). The proposals include three clarifications of its rules affecting eligible bankers' acceptances and the placement of reserve requirements on all ineligible acceptances. This would involve changes to Regulation D (Reserve Requirements of Depository Institutions).

In order to facilitate implementation of the new act, the Board has delegated to the Federal Reserve Banks the authority to grant permission to member banks to create certain bankers' acceptances of up to 200 percent of capital stock and surplus.

Interested parties are invited to submit comments concerning the proposed rule changes to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C., 20551. Comments should refer to Docket Number R-0453 (Bankers' Acceptances) or Docket Number R-0451 (Regulation D) and must be received by March 18, 1983.

Attached are copies of the Board's press release and the material submitted for publication in the Federal Register. Questions regarding the material contained in this circular should be directed to Mike Broker in the Legal Department, Extension 6228.

Additional copies of this circular will be furnished upon request to the Public Affairs Department, Extention 6289.

Sincerely yours,

William H. Wallace

William H. Wallace
First Vice President

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

FEDERAL RESERVE press release

For immediate release

February 1, 1983

The Federal Reserve Board today published for comment several proposals regarding bankers' acceptances in connection with the recently enacted Bank Export Services Act (BESA).

The Board asked for comment on its proposals by March 18, 1983.

The Board's actions implement provisions of the BESA that raise the limit on issuance by member banks without prior approval of "eligible"[1/] bankers' acceptances from 50 to 150 percent of paid-in capital and surplus; authorize the Federal Reserve to permit a member bank to issue eligible acceptances up to an aggregate of 200 percent of paid-in capital and surplus, and apply these new limitations also to U.S. branches and agencies of foreign banks, but not to nonmember domestic banks.

In connection with the new legislation, the Board requested comment on three clarifications of its rules affecting eligible bankers' acceptances. The Board also proposes to place reserve requirements on all ineligible[2/] acceptances.

To facilitate implementation of the new act, the Board approved delegation to the Reserve Banks of authority to permit issuance by member banks, and by U.S. branches and agencies of large foreign banks, of eligible acceptances up to 200 percent of their paid-in capital and surplus. In considering requests to permit institutions to issue acceptances up to this limit, the Reserve Banks will take into account factors related to the institution's capital position, financial condition and management quality.

[1/] Banker's acceptances are eligible for exclusion from Federal reserve requirements if they meet criteria in Section 13 of the Federal Reserve Act including requirements that the acceptance (1) grows out of a trade transaction involving exporting, importing or domestic shipment and storage of goods and (2) has a maturity of less than six months.

[2/] Not meeting the above noted criteria.

(OVER)

The principal elements of the Board's proposals are:

1. Participations

Participations in eligible acceptances purchased by a member bank or a U.S. branch or agency of a foreign bank are to be included in the buyer's limit of acceptances, while those sold to nonmember banks remain part of the limit of acceptances applicable to the selling member bank or U.S. branch or agency.

2. Domestic transactions

Eligible acceptances growing out of domestic transactions may not exceed 50 percent of the maximum amount of eligible acceptances that an institution may issue, rather than 50 percent of its acceptances outstanding at any one time.

3. Capital of U.S. branches and agencies

This is to be determined and reported following procedures for reporting to the Board under the Board's Regulation Y (Report FR Y-7).

4. Agented acceptances

Under the Board's Regulation D (Reserve Requirements of Depository Institutions) ineligible bankers' acceptances currently are subject to reserve requirements if and only if they are created, discounted and sold by the same depository institution. A market is developing in which, to avoid reserve requirements, such acceptances are created by one bank and discounted and sold by another bank or dealer (known as "agented" acceptances).

To limit the growth of this reserve avoidance the Board proposed that all ineligible bankers' acceptances issued by a depository institution be made subject to reserve requirements under Regulation D, even though the issuing institution does not discount and resell the ineligible acceptance.

The Board's delegation of authority and its proposals are set forth in the attached notices of its actions.

Attachments

FEDERAL RESERVE SYSTEM

[12 CFR Part 250]

[Docket No. R-0453]

MISCELLANEOUS INTERPRETATIONS

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: The Board is proposing to clarify the meaning of the seventh paragraph of section 13 of the Federal Reserve Act as amended by the Bank Export Services Act (Title II of Pub. L. 97-290).

DATES: Comments must be received by March 18, 1983.

ADDRESS: Interested parties are invited to submit written data, views, or arguments concerning the proposed rule to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N. W., Washington, D. C. 20551, or such comments may be delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), or Robert G. Ballen, Attorney (202/452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 207 of the Bank Export Services Act (Title II of Pub. L. 97-290) ("BESA") provides that a member bank or a Federal or State branch or agency in the United States whose parent foreign bank has, or is controlled by a foreign company or companies that have, more than $1 billion in total worldwide consolidated bank assets, may accept drafts or bills of exchange drawn upon it of the type described in that section in the aggregate up to 150 per cent of its paid up and unimpaired capital stock and surplus and, with the permission of the Board, up to 200 per cent of its paid up and unimpaired capital stock and surplus (12 U.S.C. § 372).

The Board is proposing to clarify the meaning of the seventh paragraph of section 13 of the Federal Reserve Act, as amended by the BESA. This clarification would cover the treatment of (1) participations

in BAs that are issued by institutions subject to the limitations of the BESA and sold to institutions not subject to such limitations, (2) participations in BAs that are issued by institutions not subject to the limitations of the BESA and sold to institutions subject to such limitations, (3) the limitation on BAs growing out of domestic transactions, and (4) the dollar equivalent of the paid up capital and surplus of the foreign bank parent of U. S. branches and agencies subject to the limitations of the BESA.

The impact of this proposal on small entities has been considered in accordance with section 603 of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. § 603). The Board's proposal will assist in assuring that small member banks that are covered by the limitations on the amount of acceptances they may issue will be able to take advantage of the increased limits of the BESA. Further, small nonmember banks should not be affected by the proposal since they typically do not issue bankers' acceptances. No new recordkeeping or reporting requirements will be imposed as a result of this action.

List of Subjects in 12 CFR Part 250

Federal Reserve System.

Pursuant to its authority under the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. § 372), the Board of Governors proposes to amend 12 CFR Part 250--Miscellaneous Interpretations, by adding a new section 250.164 to read as follows:
§ 250.164--Bankers' acceptances

(a) Section 207 of the Bank Export Services Act (Title II of Pub. L. 97-290) ("BESA") raised the limits on the aggregate amount of eligible bankers' acceptances ("BAs") that may be issued by an individual member bank from 50 per cent (or 100 per cent with the permission of the Board) of its paid up and unimpaired capital stock and surplus ("capital") to 150 per cent (or 200 per cent with the permission of the Board) of its capital. This section of the BESA applies the same limits applicable to member banks to U. S. branches and agencies of foreign banks that are subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105). The Board is issuing this rule as to the proper meaning of the seventh paragraph of section 13 of the Federal Reserve Act, as amended by the BESA.

(b)(1) This section of the BESA provides that any portion of an eligible BA that is issued by an institution subject to the BA limitations contained therein ("covered bank") shall not be included in the calculation of the issuer's limits if it is sold through a participation agreement to another covered bank. The participation is to be applied to the limitations applicable to the covered bank purchasing the participation. Although a covered bank that has reached its 150 or 200 per cent limit can continue to create eligible acceptances by selling

participations to other covered banks, Congress has in effect imposed an aggregate limit on the eligible acceptances that may be issued by all covered banks equal to the sum of 150 or 200 per cent of the capital of all covered banks.

(2) The Board has clarified that under the statute an eligible BA issued by a covered bank that is sold through a participation agreement to an institution that is not subject to the limitations of this section of the BESA continues to be included in the limitations applicable to the issuing covered bank. However, given that Edge Corporations, like covered banks, are subject to separate per customer and aggregate BA limits imposed by Federal statute or regulation, a participation in an eligible BA issued by a covered institution that is sold to an Edge Corporation should be included in the limits applicable to the Edge Corporation and not included in the limits applicable to the creating covered bank. This will ensure that the total amount of eligible BAs that may be issued by covered banks does not exceed the 150 or 200 per cent of capital limitations established by Congress. In addition, this ensures that participations in acceptances are not used as a device for the avoidance of reserve requirements.

(3) In addition, a participation purchased by a covered bank from an institution not covered by the limitations of the Act is to be included in the limitations applicable to the purchasing covered bank. Subjecting participations in acceptances issued by institutions not covered by the Act that are purchased by a covered bank to the purchasing covered bank's acceptance limitations is based upon the language of the statute which includes within the institution's limits on eligible bankers' acceptances outstanding, the amount of participations purchased by the institution. This provision reflects Congressional intent that a covered bank not be obligated on eligible bankers' acceptances, and participations therein, for an amount in excess of 150 or 200 per cent of the institution's capital.

(c) The statute also provides that eligible acceptances growing out of domestic transactions are not to exceed 50 per cent of the aggregate of all acceptances authorized for covered banks. The Board has clarified that this 50 per cent limitation is applicable to the maximum permissible amount of eligible BAs (150 or 200 per cent of capital), regardless of the bank's amount of eligible acceptances outstanding. The statutory language prior to the BESA amendment made clear that covered banks could issue eligible acceptances growing out of domestic transactions up to 50 per cent of the amount of the total permissible eligible acceptances the bank could issue. The legislative history of the BESA indicates no intent to change this domestic acceptance limitation.

(d) The statute also provides that for the purpose of the limitations that apply to U. S. branches and agencies of foreign banks, a branch's or agency's capital is to be calculated as the dollar equivalent

of the capital stock and surplus of the parent foreign bank as determined by the Board. The Board has clarified that for purposes of calculating the BA limits applicable to U. S. branches and agencies of foreign banks, the identity of the parent foreign bank is the same as for reserve requirement purposes. Accordingly, the parent of a U. S. branch or agency would be the bank entity that owns the branch or agency most directly. The Board has also clarified that the procedures currently used for purposes of reporting to the Board on the Annual Report of Foreign Banking Organizations, Form F.R. Y-7, are also to be used in the calculation of the acceptance limits applicable to U. S. branches and agencies of foreign banks. The F.R. Y-7 generally requires financial statements prepared in accordance with local accounting practices and an explanation of the accounting terminology and the major features of the accounting standards used in the preparation of the financial statements. Conversions to the dollar equivalent of the worldwide capital of the foreign bank should be made periodically. In this regard, the Board notes the need to be flexible in dealing with the effect of foreign exchange rate fluctuations on the calculation of the worldwide capital of the parent foreign bank. The Board believes that these procedures should minimize reporting and calculation burdens for U. S. branches and agencies of foreign banks that are subject to the limitations of this section of the BESA.

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By order of the Board of Governors, February 1, 1983.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board

[SEAL]

FEDERAL RESERVE SYSTEM

REGULATION D

12 CFR Part 204

[Docket No. R-0451]

RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

Ineligible Bankers' Acceptances

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: Under the Board's current Regulation D--Reserve Requirements of Depository Institutions (12 CFR Part 204), a bankers' acceptance ("BA") that does not meet the criteria of section 13 of the Federal Reserve Act ("ineligible BA") is regarded as a reservable deposit only if it is created, discounted, and sold by the same depository institution. In order to avoid reserve requirements, some banks have recently entered into arrangements with brokers and other third parties that provide for the issuance of an ineligible BA by the bank and the subsequent discount and/or resale by a third party. To prevent the use of this device as a means of avoiding reserve requirements, the Board proposes to amend Regulation D such that the creation of an ineligible BA results in a reservable liability regardless of whether the depository institution that creates the BA subsequently discounts and/or sells it.

DATES: Comments must be received by March 18, 1983.

ADDRESS: Interested parties are invited to submit written data, views, or arguments concerning the proposed rule to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D. C. 20551, or such comments may be delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625); Paul S. Pilecki, Senior Attorney (202/452-3281); or Robert G. Ballen, Attorney (202/452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 19(a) of the Federal Reserve Act authorizes the Board to determine what types of obligations are reservable deposits (12 USC § 461(a)). In addition, section 19(a) grants the Board authority to prescribe regulations necessary to prevent evasions of reserve requirements.

Regulation D currently regards an ineligible BA as a reservable deposit only if it is created, discounted, and sold by the same depository institution. Some banks have recently entered into agented BA arrangements with brokers and other third parties that provide for the issuance of an ineligible BA by the bank and the subsequent discount and/or resale by the third party. Since the bank issuing the BA did not discount and resell the acceptance, currently it is not required to maintain reserves against the BA. Similarly, the third party depository institution that discounts and/or resells the BA pursuant to such an arrangement would not be subject to reserve requirements on the transaction since it did not issue the BA. The Board believes that these arrangements serve only as a device to avoid reserve requirements under Regulation D. In order to prevent reserve requirement evasion, the Board proposes to amend Regulation D such that the creation of an ineligible BA results in a reservable deposit regardless of whether the depository institution that creates the BA subsequently discounts and/or sells it. The Board notes that where the party discounting or selling the BA is not the same institution that created the BA, it is in many cases difficult, if not impossible, to determine whether the discount and sale of the BA have occurred pursuant to a prearranged agented BA transaction. Commenters may also wish to address whether reserve requirements should be applied only to agented BA transactions and how such agented arrangements may be identified--in addition to comments on other aspects of the proposal.

It should be noted that under the proposal reserve requirements would not apply to an ineligible BA that the issuing institution itself discounts and holds since under current practices, such acceptances are not regarded as acceptances outstanding. Further, due to equity considerations, the Board proposes that this amendment not apply to outstanding ineligible BAs that were created prior to the announcement of the proposed amendment. Depository institutions would be on notice that under the proposal all ineligible BAs created after the date of the announcement would be subject to reserve requirements even if the creating institution did not itself discount and sell the acceptance. Comments on this proposed amendment must be received by March 18, 1983.

The impact of this proposal on small entities has been considered in accordance with section 603 of the Regulatory Flexibility Act (Pub. L.

96-354; 5 USC § 603). Section 411 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320; 96 Stat. 1520) provides for an exemption from reserve requirements for the first $2.1 million in reservable liabilities at all depository institutions. The Board believes that its proposed action would not add any reserve requirement burden to small depository institutions that have zero reserve requirements as a result of section 411 of the Garn-St Germain Act. In addition, small entities typically do not issue ineligible BAs. No new recordkeeping or reporting requirements will be imposed as a result of this action.

List of Subjects in 12 CFR Part 204

Banks, banking; Currency; Federal Reserve System; Penalties; Reporting Requirements.

Pursuant to its authority under section 19(a) of the Federal Reserve Act (12 USC § 461(a)), the Board proposes to amend section 204.2 of Regulation D (12 CFR Part 204) by redesignating existing subparagraph (a)(1)(vii) as (a)(1)(viii); by removing the words "banker's acceptance,", by adding the word "or" at the end of subparagraph (C), by changing the semi-colon at the end of subparagraph (D) to a period, by removing the word "or" at the end of subparagraph (D), and by removing subparagraph (E) from subparagraph (a)(1)(viii); and by adding a new subparagraph (a)(1)(vii) to read as follows:

SECTION 204.2 -- DEFINITIONS

* * * * *

(a)(1) * * *

(vii) any liability of a depository institution that arises from the creation after January 31, 1983, of a bankers' acceptance that is not of the type described in paragraph 7 of section 13 of the Federal Reserve Act (12 U.S.C. 372); or

* * * * *

By order of the Board of Governors, February 1, 1983.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board

[SEAL]

FEDERAL RESERVE SYSTEM

[12 CFR Part 265]

[Docket No. R-0452]

RULES REGARDING DELEGATION OF AUTHORITY

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate the performance of certain of its functions, the Board of Governors has delegated to the Federal Reserve Banks the authority to grant permission to member banks and certain United States branches and agencies of foreign banks to create bankers' acceptances of the type described in 12 U.S.C. § 372 up to 200 per cent of capital stock and surplus. The Board has specified certain factors the Reserve Banks should take into account in considering requests for such permission.

EFFECTIVE DATE: February 1, 1983.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), or Robert G. Ballen, Attorney (202/452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Section 207 of the Bank Export Services Act (Title II of Pub. L. 97-290) ("BESA") provides that a member bank or a Federal or State branch or agency in the United States whose parent foreign bank has, or is controlled by a foreign company or companies that have, more than $1 billion in total worldwide consolidated bank assets, may accept drafts or bills of exchange drawn upon it of the type described in that section in the aggregate up to 150 per cent of its paid up and unimpaired capital stock and surplus and, with the permission of the Board, up to 200 per cent of its paid up and unimpaired capital stock and surplus (12 U.S.C. § 372).

The Board has amended its Rules Regarding Delegation of Authority to authorize the Federal Reserve Banks to grant permission to a member bank or a U. S. branch or agency of the type described above to

accept drafts or bills of exchange of the type described in 12 U.S.C. § 372 in an aggregate amount up to 200 per cent of its capital and surplus. (For purposes of considering applications from U. S. branches and agencies of foreign banks, the identity of the parent foreign bank is the same as for reserve requirement purposes. Accordingly, the parent of the U. S. branch or agency would be the bank entity that owns the branch or agency most directly.) The Reserve Banks may grant such permission after giving consideration to the institution's capitalization in relation to the character and condition of its assets, liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management.

Reserve Banks are not to consider a request for permission to accept such drafts or bills of exchange up to 200 per cent of capital and surplus unless the institution requesting such permission plans to make use of it in the reasonably near future, which generally would be no more than twelve months. The Board reserves the right to withdraw such permission if changes in circumstances warrant. In addition, Reserve Banks should use the occasion of the consideration of requests for permission to accept bankers' acceptances up to 200 per cent of capital to encourage banks to increase their capital.

In this connection, the Board determined that Reserve Banks should consider the following factors in evaluating requests for permission to create bankers' acceptances of the type described in 12 U.S.C. § 372 up to 200 per cent of capital and surplus:

1) The reasons why the expanded authority is being requested, including a quantification of the extent to which the general authority in section 13 of the Federal Reserve Act has been used to date (including the type, tenor and general quality of acceptances issued by the Applicant and participations purchased by the Applicant that are currently outstanding) and Applicant's plans for implementation of the expanded acceptance authority over time.

2) An assessment of the financial condition of the Applicant, including an evaluation of the Applicant's capital position in relation to the character and conditions of its assets and to its deposit liabilities and other corporate

responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets.

3) Projected growth and sources of capital of the Applicant over the next 12 months.

4) An assessment of management strengths and weaknesses of the Applicant.

The provisions of sections 553 and 604 of Title 5, United States Code, relating to notice, public participation, deferred effective date, and regulatory flexibility analysis are not followed in connection with these matters because the delegation is procedural in nature.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies); Banks, banking; Federal Reserve System.

Pursuant to its authority under section 11(k) and the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. §§ 248(k) and 372), the Board of Governors amends its Rules Regarding Delegation of Authority (12 CFR Part 265) effective February 1, 1983, by revising paragraph (f) of section 265.2 to read as follows:

SECTION 265.2 -- SPECIFIC FUNCTIONS DELEGATED TO BOARD EMPLOYEES AND TO FEDERAL RESERVE BANKS

* * * * *

(f) * * *

(6) Under the provisions of the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372), to permit a member bank or a Federal or State branch or agency of a foreign bank that is subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) to accept drafts or bills of exchange in an aggregate amount at any one time up to 200 per cent of its paid up and unimpaired capital stock and surplus, if the Reserve Bank is satisfied that such permission is warranted after giving consideration to the institution's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other

corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management.

* * * * *

By order of the Board of Governors, February 1, 1983

(signed) William W. Wiles

William W. Wiles
Secretary of the Board

[SEAL]