



FEDERAL RESERVE BANK
OF DALLAS

TONY J. SALVAGGIO
FIRST VICE PRESIDENT

December 18, 1992

DALLAS, TEXAS 75222

Notice 92-122

TO: The Operating Officer at each
financial institution in the
Eleventh Federal Reserve District

SUBJECT

Operating Circular 16
(Electronic Access)

DETAILS

The Federal Reserve Bank of Dallas has begun renaming and reissuing its Bulletins as Operating Circulars in order to conform to the language used in the Uniform Commercial Code. Bulletin 16 is being reissued as Operating Circular 16 (Electronic Access).

In connection with this reissue, Operating Circular 16 has been completely rewritten as a uniform policy circular for the Federal Reserve System. Previous versions were issued by the Federal Reserve Bank of Dallas and only applied to electronic connections with this Bank. The new Operating Circular is standard for and applies to electronic connections to any Federal Reserve Bank. There are no substantive changes.

ENCLOSURE

Enclosed is Operating Circular 16. Please file it in your Operating Circulars (Bulletins) binder and discard the old version.

MORE INFORMATION


For more information regarding electronic access, please contact the persons listed below at the Dallas Office:

Vannecie Willis	(214) 922-6455	or	(800) 333-4460, ext. 6455
Jonnie Miller	(214) 922-6433	or	(800) 333-4460, ext. 6433
Larry Ripley	(214) 922-6429	or	(800) 333-4460, ext. 6429

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For additional copies of this Bank's notice or Operating Circular 16, please contact the Public Affairs Department at (214) 922-5254.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. J. Salzman".



Operating Circular

F e d e r a l R e s e r v e B a n k o f D a l l a s



16

Electronic Access

Scope

Operating Circular 16 sets forth the terms and conditions applicable to the use of electronic terminals, equipment, and software to access services provided by this Bank on the RESPONSE network.

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GENERAL

1. This Operating Circular, as well as any appendix, exhibit, or supplement to it, sets forth the terms under which a depository institution or other authorized institution ("Participant") may access certain services provided by the Federal Reserve Bank of Dallas and may send to us or receive from us certain data by means of electronic connections. For purposes of this circular, "electronic connections" refers to communication facilities, other than telephone voice-response systems, used to exchange data between a Participant's computer(s), including terminal(s), and our computer(s).
2. The services that may be accessed using electronic connections are, for example, transfers of funds and securities, commercial and governmental automated clearinghouse transactions, notifications of nonpayment of checks, orders for cash and savings bonds, transmission of our data (such as check information, federal tax payment advices, and statements of account) to Participants, and Participants' transmission of data (such as statistical and financial reports and Treasury Tax and Loan reports) to us. We may, from time to time, offer other services using electronic connections. By accessing any of the services using electronic connections, a Participant agrees to abide by the terms and conditions of this Operating Circular and any appendix, exhibit, or supplement to it.
3. This Operating Circular does not supersede the Operating Circulars, regulations, or instructions governing particular types of transactions; it only governs the use of electronic connections to effect such transactions. A Participant that accesses any of our services, or that sends to us or receives from us any data, by means of electronic connection agrees to the terms of this Operating Circular.
4. Participant's written request and our prior written approval are required before (a) a Participant uses an electronic connection for access to any of our services or to send any data to us; (b) a Participant shares the use of an electronic connection with another Participant or has any other party act as its agent in sending or receiving transfers or other messages; or (c) a Participant sublicense, assigns, or transfers any of its rights, duties, or obligations under this Operating Circular.

PARTICIPANT'S EQUIPMENT AND SOFTWARE

5. Each Participant is responsible for maintaining compatibility of its computer(s) and associated equipment and software with our requirements, as amended from time to time, and for maintaining its own equipment. We reserve the right to approve each Participant's equipment and software for compatibility.

COMMUNICATION LINES

6. A Participant may choose, where available, an electronic connection that utilizes a dial (or switched) circuit, multidrop leased circuit, or dedicated (point-to-point) leased circuit. If the volume of data sent or received exceeds our guidelines for a type of line, we may require an upgrade, such as from a dial circuit to a multidrop leased circuit.

FEDERAL RESERVE BANK-SUPPLIED EQUIPMENT AND SOFTWARE

7. We may arrange for the delivery and installation of modems, encryption devices, and other equipment necessary for electronically connecting a Participant's computer(s) to our network, and we will repair or replace as soon as practicable any such equipment that malfunctions. Our equipment may not be altered, encumbered, relocated, or removed except with our prior written approval.
8. We provide, on request, either the Computer Interface Protocol Specification or the software (including updates, modifications, and documentation) to enable a Participant's computer to connect to our network. We provide one copy of our software for each computer directly connected to our network, and we may provide one copy for each terminal used for data entry and export to a computer directly connected to our network. We grant the Participant a nonexclusive, nontransferable license to use our software for the purposes stated in this Operating Circular. We also supply log-on identifications (log-on IDs), encryption keys, and user manuals; and we may provide training to a Participant's employees in the use of our software.
9. We warrant that we have the right to license or sublicense our software. Also, we shall indemnify and hold any Participant harmless from any loss or expense arising from any claim that our software infringes a patent, copyright,

trademark, or other proprietary right of any third party if we are given prompt written notice of the claim, if we have sole control of the defense of the claim and of any settlement negotiations, and if the Participant cooperates fully with us in the defense and negotiations.

10. A Participant shall not, except with our prior written consent,

- A. modify, add to, transfer, reverse-assemble, or reverse-compile our software;
- B. use our software other than on a computer(s) for access to our network or on a terminal(s) used for entry of data that are to be exported to such a computer; all such computers and terminals should be located on the Participant's premises;
- C. copy our software except for use consistent with subparagraph B and except for backup purposes; all copies shall include our copyright and proprietary notices externally in the distribution medium and internally in machine-readable form; or
- D. remove any copyright notices contained in our software.

11. Our equipment and software are furnished strictly on an as-is basis. We do not warrant that operation of our equipment or software will meet a Participant's planned applications, that our equipment or software will be compatible with Participant-owned equipment, or that all equipment or software defects can be corrected. Our sole obligation in the event of a malfunction in our equipment or software is to provide reasonable assistance to a Participant in resolving problems or to replace defective or damaged equipment or software that a Participant returns to us. **THE OBLIGATIONS AND THE WARRANTY SET FORTH IN THIS PARAGRAPH AND IN PARAGRAPHS 7 AND 9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER WARRANTY ARISING BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE.**

12. Our software includes trade secrets and proprietary information of this Reserve Bank and others, which may or may not be copyrighted or patented. Disclosure of our software would likely cause us immediate and irreparable damage for which there may be no adequate remedy at law. Each Participant shall treat our software and documentation as confidential information, protecting them with at least the same degree of care the Participant uses to protect its own confidential information. Each Participant shall take all necessary steps with its employees and agents to enforce this obligation; a Participant shall notify us immediately by telephone, with written confirmation, of any unauthorized disclosure or use of our software of which the Participant is aware and shall use its best efforts to prevent further unauthorized disclosure or use.

13. Our software is provided either on diskettes or through data transmission facilities. The diskettes have been duplicated by us or by outside suppliers that we believe use equipment protected by commercially reasonable technology to prevent the introduction of viruses and other defects. We test random samples of diskettes obtained from vendors, using virus-detection software that we believe is commercially reasonable. However, it is not feasible for us to test all such diskettes, and our virus-detection software may not detect all viruses or other defects. Our data transmission facilities are also protected by what we believe is commercially reasonable technology to prevent the introduction of viruses and other defects.

14. Each Participant shall take all commercially reasonable precautions to prevent the introduction of computer viruses or other defects that might disrupt the operations of our computers or those of other Participants.

RISK AND LIABILITY IN USE OF ELECTRONIC CONNECTIONS

15. Each Participant acknowledges that its electronic connection and our software, diskettes, encryption keys, log-on IDs, passwords, and other access controls can be used to originate funds and other value messages as well as non-value messages. Each Participant assumes sole responsibility for and the entire risk of use and operation of its electronic connection and related items, and the Participant agrees that we may act on any message that we receive through an electronic connection and subsequently

authenticate as the Participant's under our procedures, to the same extent as though we have received written instructions bearing the manual signature of a duly authorized officer of the Participant. It is also agreed that we are not liable for delays, errors, or omissions in the transmission of messages to or from the Participant, resulting from imperfections in the equipment or lines or otherwise beyond our control.

16. Our liability in connection with payment orders (as defined in Article 4A of the Uniform Commercial Code) is as set forth in Subpart B of Regulation J; our Operating Circular 6, *Wire Transfers of Funds*; and our Operating Circular 11, *Automated Clearinghouse Operations*. With respect to our liability in other areas, nothing in paragraph 15 shall be construed to relieve us from responsibility for our own failure to exercise ordinary care or to act in good faith, except that our liability is strictly limited to damages proximately suffered by a Participant and does not extend to lost profits, claims against a Participant by others, or other consequential or incidental damages, even if we have been informed of the possibility of such damages.

17. Each Participant shall conform to the security procedures, operating instructions, guidelines, and specifications for interconnection that we specify from time to time. We make no warranties with respect to such procedures and specifications, or otherwise, in relation to the use of an electronic connection.

18. Each Participant agrees to keep our security procedures confidential and not disclose them to third parties or to its employees except on a need-to-know basis. A Participant shall notify us immediately by telephone, with written confirmation, of any suspected fraud, infringement, or security breach relating to its electronic connection(s).

19. Each Participant should manage its electronic connection(s) so as to permit us to send transfers and messages to it on a timely basis throughout the day. We are not responsible for any delay in sending a transfer or other message to a Participant (or for notifying any party of such a delay) if the delay results from the Participant's failure to so manage its connection(s).

20. Problems with hardware, software, or data transmission may, on occasion, delay or prevent us from sending or receiving payments or other

data electronically. Accordingly, Participants should be prepared to send or receive payments or other data by other means.

FEES AND TAXES

21. Our fees for electronic access services (for example, installation support, connection, and equipment lease) are published separately and are subject to change on 30 calendar days' notice. We may charge the account maintained or used by a Participant on our books for the amount of such fees.

22. If, because of failure of a Participant's equipment, either this Bank or the Participant reverts to an Offline Security Procedure, we reserve the right to charge our offline fees.

23. Each Participant is liable for the payment of any taxes, however designated, levied on its possession or use of equipment or software that we have supplied, including (without limitation) state and local sales, use, value-added, and property taxes.

TERMINATION

24. A Participant may terminate its agreement to participate in services through electronic connections and may terminate its agreement to the terms of this Operating Circular with 30 calendar days' advance written notice. We may terminate a Participant's authority to use an electronic connection with similar notice. We may also terminate a Participant's authority and take possession of our equipment and software at any time if we believe that the Participant is in violation of this Operating Circular.

25. Upon termination, a Participant shall promptly return all Reserve Bank-supplied equipment and software (including software documentation) and shall delete any installed copies of such software. A Participant's obligations pertaining to confidentiality and non-disclosure shall survive any termination of its agreement to this Operating Circular.

RIGHT TO AMEND

26. We reserve the right to amend this Operating Circular at any time but will endeavor to give at least 30 calendar days' notice to each Participant.