



FEDERAL RESERVE BANK
OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

DALLAS, TEXAS
75265-5906

June 19, 1998

Notice 98-46

TO: The Chief Executive Officer of each
financial institution and others concerned
in the Eleventh Federal Reserve District

SUBJECT

**Revised Pamphlets for Regulation J
and Regulations T, U, and X**

DETAILS

The Board of Governors of the Federal Reserve System has published revised pamphlets for Regulation J (*Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire*), effective January 2, 1998, and Regulations T, U, and X (*Securities Credit Transactions*), effective April 1, 1998.

ENCLOSURES

The revised pamphlets are enclosed. Please insert them in your Regulations binders.

For additional copies, bankers and others are encouraged to use one of the following toll-free numbers in contacting the Federal Reserve Bank of Dallas: Dallas Office (800) 333-4460; El Paso Branch *Intrastate* (800) 592-1631, *Interstate* (800) 351-1012; Houston Branch *Intrastate* (800) 392-4162, *Interstate* (800) 221-0363; San Antonio Branch *Intrastate* (800) 292-5810.

MORE INFORMATION

For more information regarding Regulation J, please contact Terry Campbell, (214) 922-6603, at the Dallas Office; Eloise Guinn, (915) 521-8201, at the El Paso Branch; Luke Richards, (713) 652-1544, at the Houston Branch; or Herb Barbee, (210) 978-1402, at the San Antonio Branch.

Sincerely yours,

Robert D. McTeer, Jr.

Securities Credit Transactions

Regulation T

12 CFR 220; as revised effective April 1, 1998

Regulation U

12 CFR 221; as revised effective April 1, 1998

Regulation X

12 CFR 224; as amended effective April 1, 1998



Any inquiry relating to Regulations U and X should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises. Any inquiry relating to Regulation T should be addressed to a national securities exchange or national securities association of which the person making the inquiry is a member or the facilities of which are used for that person's transactions, or, if this is not practicable, the inquiry should be addressed to the Federal Reserve Bank of the District in which the inquiry arises.

The forms with these regulations are reduced in size and are for information only. Copies of these forms for actual use and other forms required by the regulations can be obtained from any Federal Reserve Bank.

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Regulation T

Credit by Brokers and Dealers

12 CFR 220; as revised effective April 1, 1998*

SECTION 220.1—Authority, Purpose, and Scope

(a) *Authority and purpose.* Regulation T (this part)** is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the act) (15 USC 78a et seq.). Its principal purpose is to regulate extensions of credit by brokers and dealers; it also covers related transactions within the Board's authority under the act. It imposes, among other obligations, initial margin requirements and payment rules on certain securities transactions.

(b) *Scope.*

(1) This part provides a margin account and four special-purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special-purpose account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

(3) This part does not apply to—

(i) financial relations between a customer and a creditor to the extent that they comply with a portfolio margining system under rules approved or amended by the SEC;

(ii) credit extended by a creditor based on a good faith determination that the borrower is an exempted borrower;

(iii) financial relations between a customer and a broker or dealer registered only under section 15C of the act; and

(iv) financial relations between a foreign branch of a creditor and a foreign person involving foreign securities.

SECTION 220.2—Definitions

The terms used in this part have the meanings given them in section 3(a) of the act or as defined in this section as follows:

Affiliated corporation means a corporation of which all the common stock is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation, and the affiliation has been approved by the creditor's examining authority.

Cash equivalent means securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, banker's acceptances issued by banking institutions in the United States and payable in the United States, or money market mutual funds.

Covered option transaction means any transaction involving options or warrants in which the customer's risk is limited and all elements of the transaction are subject to contemporaneous exercise if—

(1) the amount at risk is held in the account in cash, cash equivalents, or via an escrow receipt; and

(2) the transaction is eligible for the cash account by the rules of the registered national securities exchange authorized to trade the option or warrant or by the rules of the creditor's examining authority in the case of an unregistered option, provided that all such rules have been approved or amended by the SEC.

Credit balance means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

Creditor means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the act), except for business entities control-

* Compliance with Regulation T, as revised, is optional until July 1, 1998.

** Code of Federal Regulations, title 12, chapter II, part 220.

ling or under common control with the creditor.

Current market value of—

- (1) a security means—
 - (i) throughout the day of the purchase or sale of a security, the security's total cost of purchase or the net proceeds of its sale including any commissions charged; or
 - (ii) at any other time, the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing sale price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.
- (2) any other collateral means a value determined by any reasonable method.

Customer excludes an exempted borrower and includes—

- (1) any person or persons acting jointly—
 - (i) to or for whom a creditor extends, arranges, or maintains any credit; or
 - (ii) who would be considered a customer of the creditor according to the ordinary usage of the trade;
- (2) any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and
- (3) any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

Debit balance means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

Delivery against payment, payment against delivery, or a COD transaction refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

Equity means the total current market value of security positions held in the margin account

plus any credit balance less the debit balance in the margin account.

Escrow agreement means any agreement issued in connection with a call or put option under which a bank or any person designated as a control location under paragraph (c) of SEC Rule 15c3-3 (17 CFR 240.15c3-3(c)), holding the underlying asset or required cash or cash equivalents, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying asset or required cash or cash equivalent against payment of the exercise price upon exercise of the call or put.

Examining authority means—

- (1) the national securities exchange or national securities association of which a creditor is a member; or
- (2) if a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

Exempted borrower means a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who—

- (1) maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer;
- (2) earns at least \$10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or
- (3) earns at least 10 percent of its gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer.

Exempted securities mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 USC 80a-8), provided the company has at least 95 percent of its assets continuously invested in exempt securities (as defined in section 3(a)(12) of the act).

Foreign margin stock means a foreign security that is an equity security that—

- (1) appears on the Board's periodically published list of foreign margin stocks; or
- (2) is deemed to have a "ready market" under SEC Rule 15c3-1 (17 CFR 240.15c3-1) or a "no-action" position issued thereunder.

Foreign person means a person other than a United States person as defined in section 7(f) of the act.

Foreign security means a security issued in a jurisdiction other than the United States.

Good faith with respect to—

- (1) margin means the amount of margin which a creditor would require in exercising sound credit judgment;
- (2) making a determination or accepting a statement concerning a borrower means that the creditor is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

Margin call means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

Margin deficiency means the amount by which the required margin exceeds the equity in the margin account.

Margin equity security means a margin security that is an equity security (as defined in section 3(a)(11) of the act).

Margin excess means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in section 220.12 (the supplement).

Margin security means—

- (1) any security registered or having unlisted trading privileges on a national securities exchange;
- (2) after January 1, 1999, any security listed on the Nasdaq Stock Market;

- (3) any nonequity security;
- (4) any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 USC 80a-8);
- (5) any foreign margin stock;
- (6) any debt security convertible into a margin security;
- (7) until January 1, 1999, any OTC margin stock; or
- (8) until January 1, 1999, any OTC security designated as qualified for trading in the national market system under a designation plan approved by the Securities and Exchange Commission (NMS security).

Money market mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 USC 80a-8) that is considered a money market fund under SEC Rule 2a-7 (17 CFR 270.2a-7).

Nonequity security means a security that is not an equity security (as defined in section 3(a)(11) of the act).

Nonexempted security means any security other than an exempted security (as defined in section 3(a)(12) of the act).

OTC margin stock means any equity security traded over the counter that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an OTC margin stock unless it appears on the Board's periodically published list of OTC margin stocks.

Payment period means the number of business days in the standard securities-settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6-1 (17 CFR 240.15c6-1(a)), plus two business days.

Purpose credit means credit for the purpose of—

- (1) buying, carrying, or trading in securities; or

(2) buying or carrying any part of an investment-contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

Short call or short put means a call option or a put option that is issued, endorsed, or guaranteed in or for an account.

(1) A short call that is not cash-settled obligates the customer to sell the underlying asset at the exercise price upon receipt of a valid exercise notice or as otherwise required by the option contract.

(2) A short put that is not cash-settled obligates the customer to purchase the underlying asset at the exercise price upon receipt of a valid exercise notice or as otherwise required by the option contract.

(3) A short call or a short put that is cash-settled obligates the customer to pay the holder of an in-the-money long put or long call who has, or has been deemed to have, exercised the option the cash difference between the exercise price and the current assigned value of the option as established by the option contract.

Underlying asset means—

(1) the security or other asset that will be delivered upon exercise of an option; or

(2) in the case of a cash-settled option, the securities or other assets which comprise the index or other measure from which the option's value is derived.

SECTION 220.3—General Provisions

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts.*

(1) *In general.* The requirements of one account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under this part, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(2) *Exceptions.* Notwithstanding paragraph (b)(1) of this section—

(i) for purposes of calculating the required margin for a security in a margin

account, assets held in the good faith account pursuant to section 220.6(e)(1)(i) or (ii) may serve in lieu of margin;

(ii) transfers may be effected between the margin account and the special memorandum account pursuant to sections 220.4 and 220.5.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of—

(1) reductions in the customer's equity resulting from changes in market prices;

(2) any security in an account ceasing to be margin or exempted; or

(3) any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.*

(1) A creditor, acting in good faith, may accept as immediate payment—

(i) cash or any check, draft, or order payable on presentation; or

(ii) any security with sight draft attached.

(2) A creditor may treat a security, check, or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(4) To temporarily finance a customer's receipt of securities pursuant to an employee benefit plan registered on SEC Form S-8 or the withholding taxes for an employee stock award plan, a creditor may accept, in lieu of the securities, a properly executed exercise notice, where applicable, and instructions to the issuer to deliver the stock to the creditor. Prior to acceptance, the creditor must verify that the issuer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.

(f) *Exchange of securities.*

(1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Arranging for loans by others.* A creditor may arrange for the extension or maintenance of credit to or for any customer by any person, provided the creditor does not willfully arrange credit that violates parts 221 or 224 of this chapter.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

(i) *Foreign currency.*

(1) Freely convertible foreign currency may be treated at its U.S. dollar equivalent, provided the currency is marked to market daily.

(2) A creditor may extend credit denominated in any freely convertible foreign currency.

(j) *Exempted borrowers.*

(1) A member of a national securities exchange or a registered broker or dealer that has been in existence for less than one year may meet the definition of exempted borrower based on a six-month period.

(2) Once a member of a national securities exchange or registered broker or dealer ceases to qualify as an exempted borrower, it shall notify its lender of this fact before obtaining additional credit. Any new extensions of credit to such a borrower, including rollovers, renewals, and additional draws on

existing lines of credit, are subject to the provisions of this part.

SECTION 220.4—Margin Account

(a) *Margin transactions.*

(1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to—

(i) clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) clear transactions through other creditors if the transactions are cleared by separate creditors; or

(iii) provide one or more accounts over which the creditor or a third-party investment adviser has investment discretion.

(b) *Required margin.*

(1) *Applicability.* The required margin for each long or short position in securities is set forth in section 220.12 (the supplement) and is subject to the following exceptions and special provisions.

(2) *Short sale against the box.* A short sale "against the box" shall be treated as a long sale for the purpose of computing the equity and the required margin.

(3) *When-issued securities.* The required margin on a net long or net short commitment in a when-issued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(4) *Stock used as cover.*

(i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (b)(1) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued

at no greater than the exercise price of the short call.

(5) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(6) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(7) *Transfer of accounts.*

(i) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(ii) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(8) *Sound credit judgment.* In exercising sound credit judgment to determine the margin required in good faith pursuant to section 220.12 (the supplement), the creditor shall make its determination for a specified security position without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

(c) *When additional margin is required.*

(1) *Computing deficiency.* All transactions on the same day shall be combined to de-

termine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.*

(i) A margin call shall be satisfied within one payment period after the margin deficiency was created or increased.

(ii) The payment period may be extended for one or more limited periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is \$1,000 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.*

(1) Cash or securities may be withdrawn from an account, except if—

(i) additional cash or securities are required to be deposited into the account

for a transaction on the same or a previous day; or

(ii) the withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.5) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under this paragraph (e), a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.*

(1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) interest charged on credit maintained in the margin account;

(ii) premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) dividends, interest, or other distributions due on borrowed securities;

(iv) communication or shipping charges with respect to transactions in the margin account; and

(v) any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if—

(i) the withdrawal does not create or increase a margin deficiency in the account; or

(ii) the current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

SECTION 220.5—Special Memorandum Account

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) dividend and interest payments;

(2) cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under section 220.4(e); and

(4) margin excess transferred from the margin account under section 220.4(e)(2).

SECTION 220.6—Good Faith Account

In a good faith account, a creditor may effect or finance customer transactions in accordance with the following provisions:

(a) *Securities entitled to good faith margin.*

(1) *Permissible transactions.* A creditor may effect and finance transactions involving the buying, carrying, or trading of any security entitled to "good faith" margin as set forth in section 220.12 (the supplement).

(2) *Required margin.* The required margin is set forth in section 220.12 (the supplement).

(3) *Satisfaction of margin.* Required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, securities entitled to "good faith" margin as set forth in section 220.12 (the

supplement), any other asset that is not a security, or any combination thereof. An asset that is not a security shall have a margin value determined by the creditor in good faith.

(b) *Arbitrage.* A creditor may effect and finance for any customer bona fide arbitrage transactions. For the purposes of this section, the term "bona fide arbitrage" means—

- (1) a purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets; or
- (2) a purchase of a security which is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

(c) *"Prime broker" transactions.* A creditor may effect transactions for a customer as part of a "prime broker" arrangement in conformity with SEC guidelines.

(d) *Credit to ESOPs.* A creditor may extend and maintain credit to employee stock ownership plans without regard to the other provisions of this part.

(e) *Nonpurpose credit.*

- (1) A creditor may—
 - (i) effect and carry transactions in commodities;
 - (ii) effect and carry transactions in foreign exchange;
 - (iii) extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (e)(2) of this section.
- (2) Every extension of credit, except as provided in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall

conform to the requirements established by the Board.

SECTION 220.7—Broker-Dealer Credit Account

(a) *Requirements.* In a broker-dealer credit account, a creditor may effect or finance transactions in accordance with the following provisions.

(b) *Purchase or sale or security against full payment.* A creditor may purchase any security from or sell any security to another creditor or person regulated by a foreign securities authority under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(c) *Joint back office.* A creditor may effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors.

(d) *Capital contribution.* A creditor may extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(e) *Emergency and subordinated credit.* A creditor may extend and maintain, with the approval of the appropriate examining authority—

- (1) credit to meet the emergency needs of any creditor; or
- (2) subordinated credit to another creditor for capital purposes, if the other creditor—
 - (i) is an affiliated corporation or would not be considered a customer of the lender apart from the subordinated loan; or
 - (ii) will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor, its firm or corporation or an affiliated corporation.

(f) *Omnibus credit.*

- (1) A creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the

act and who gives the creditor written notice that—

- (i) all securities will be for the account of customers of the broker or dealer; and
- (ii) any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(2) The written notice required by paragraph (f)(1) of this section shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

(g) *Special-purpose credit.* A creditor may extend the following types of credit with good faith margin:

- (1) credit to finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid upon completion of the transaction;
- (2) credit to finance securities in transit or surrendered for transfer, if the credit is to be repaid upon completion of the transaction;
- (3) credit to enable a broker or dealer to pay for securities, if the credit is to be repaid on the same day it is extended;
- (4) credit to an exempted borrower;
- (5) credit to a member of a national securities exchange or registered broker or dealer to finance its activities as a market maker or specialist; and
- (6) credit to a member of a national securities exchange or registered broker or dealer to finance its activities as an underwriter.

SECTION 220.8—Cash Account

(a) *Permissible transactions.* In a cash account, a creditor may—

- (1) buy for or sell to any customer any security or other asset if—
 - (i) there are sufficient funds in the account; or
 - (ii) the creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment;
- (2) buy from or sell for any customer any security or other asset if—
 - (i) the security is held in the account; or

(ii) the creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

- (3) issue, endorse, or guarantee, or sell an option for any customer as part of a covered option transaction; and
- (4) use an escrow agreement in lieu of the cash, cash equivalents, or underlying asset position if—

(i) in the case of a short call or a short put, the creditor is advised by the customer that the required securities, assets, or cash are held by a person authorized to issue an escrow agreement and the creditor independently verifies that the appropriate escrow agreement will be delivered by the person promptly; or

(ii) in the case of a call issued, endorsed, guaranteed, or sold on the same day the underlying asset is purchased in the account and the underlying asset is to be delivered to a person authorized to issue an escrow agreement, the creditor verifies that the appropriate escrow agreement will be delivered by the person promptly.

(b) *Time periods for payment; cancellation or liquidation.*

(1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases—

(i) within one payment period of the date—

(A) any nonexempted security was purchased;

(B) any when-issued security was made available by the issuer for delivery to purchasers;

(C) any when-distributed security was distributed under a published plan;

(D) a security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided—

(1) the customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(2) the customer is entitled to the proceeds of the redemption; and

(3) the delayed payment does not exceed 103 percent of the proceeds of the old security.

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or within one day after the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery-against-payment transactions.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery-against-payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities; extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but not by more than one additional payment period.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding \$1,000.

(c) *90-day freeze.*

(1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90-day freeze shall not apply if—

(i) within the period specified in paragraph (b)(1) of this section, full payment is received or any check or draft in pay-

ment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

(ii) the purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.*

(1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may, upon application by the creditor—

(i) extend any period specified in paragraph (b) of this section;

(ii) authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) grant a waiver from the 90-day freeze.

(2) Applications shall be filed and acted upon prior to the end of the payment period, or in the case of the purchase of a foreign security within the period specified in paragraph (b)(1)(ii) of this section, or the expiration of any subsequent extension.

SECTION 220.9—Clearance of Securities, Options, and Futures

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with a clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options or futures clearing agency for the purpose of meeting the deposit requirements of the agency if—

(1) the clearing agency—

(i) issues, guarantees performance on, or

clears transactions in, any security (including options on any security, certificate of deposit, securities index, or foreign currency); or

(ii) guarantees performance of contracts for the purchase or sale of a commodity for future delivery or options on such contracts;

(2) the clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) the deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

SECTION 220.10—Borrowing and Lending Securities

(a) Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. If a creditor reasonably anticipates a short sale or fail transaction, such borrowing may be made up to one standard settlement cycle in advance of trade date.

(b) A creditor may lend foreign securities to a foreign person (or borrow such securities for the purpose of relending them to a foreign person) for any purpose lawful in the country in which they are to be used.

(c) A creditor that is an exempted borrower may lend securities without regard to the other provisions of this part and a creditor may borrow securities from an exempted borrower without regard to the other provisions of this part.

SECTION 220.11—Requirements for the List of Marginable OTC Stocks and the List of Foreign Margin Stocks

(a) *Requirements for inclusion on the list of*

marginable OTC stocks. Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) the minimum average bid price of such stock, as determined by the Board, is at least \$5 per share;

(3) the stock is registered under section 12 of the act, is issued by an insurance company subject to section 12(g)(2)(G) of the act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 USC 80a-8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the act, or is a stock of an issuer required to file reports under section 15(d) of the act;

(4) daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) the stock has been publicly traded for at least six months;

(6) the issuer has at least \$4 million of capital, surplus, and undivided profits;

(7) there are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock;

(8) there are 1,200 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) the issuer or a predecessor-in-interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) the minimum average bid price of such stocks, as determined by the Board, is at least \$2 per share;

(3) the stock is registered as specified in paragraph (a)(3) of this section;

(4) daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) the issuer has at least \$1 million of capital, surplus, and undivided profits;

(6) there are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) there continue to be 800 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign security shall meet the following requirements before being placed on the list of foreign margin stocks:

(1) the security is an equity security that is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

(2) daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) the aggregate market value of shares, the ownership of which is unrestricted, is not less than \$1 billion;

(4) the average weekly trading volume of

such security during the preceding six months is either at least 200,000 shares or \$1 million; and

(5) the issuer or a predecessor-in-interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign security shall meet the following requirements to remain on the list of foreign margin stocks:

(1) the security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) the aggregate market value of shares, the ownership of which is unrestricted, is not less than \$500 million; and

(3) the average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or \$500,000.

(e) *Removal from the lists.* The Board shall periodically remove from the lists any stock that—

(1) ceases to exist or of which the issuer ceases to exist; or

(2) no longer substantially meets the provisions of paragraphs (b) or (d) of this section or the definition of OTC margin stock.

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the list of marginable OTC stocks and the list of foreign margin stocks an equity security if, in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

SECTION 220.12—Supplement: Margin Requirements

The required margin for each security position held in a margin account shall be as follows:

(a) *Margin equity security, except for an exempted security, money market mutual fund or exempted-securities mutual fund, warrant on a securities index or foreign currency, or a long position in an option:* 50 percent of the current market value of the security or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(b) *Exempted security, nonequity security, money market mutual fund, or exempted securities mutual fund:* the margin required by the creditor in good faith or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(c) *Short sale of a nonexempted security, except for a nonequity security:*

(1) 150 percent of the current market value of the security, or

(2) 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account, provided that any long call to be used as margin in connection with a short sale of the underlying security is an American-style option issued by a registered clearing cor-

poration and listed or traded on a registered national securities exchange with an exercise price that does not exceed the price at which the underlying security was sold short.

(d) *Short sale of an exempted security or nonequity security:* 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) *Nonmargin, nonexempted equity security:* 100 percent of the current market value.

(f) *Put or call on a security, certificate of deposit, securities index or foreign currency, or a warrant on a securities index or foreign currency:*

(1) in the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association and registered warrants on a securities index or foreign currency, the amount, or other position specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC; or

(2) in the case of all other puts and calls, the amount, or other position, specified by the maintenance rules of the creditor's examining authority.

Form T-1, T-2—Agreement of Domestic and Foreign Nonmember Banks

FR T-1, T-2
OMB No. 7100-0191
Approval expires July 31, 1998

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

Agreement of Domestic (T-1) and Foreign (T-2) Nonmember Banks
(Federal Reserve Form T-1, T-2)

This report is required by sections 8 and 23 of the Securities Exchange Act of 1934 (16 U.S.C. 1178h and 78w).

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0191), Washington, D.C. 20503

AGREEMENT

In order (1) to qualify under section 8(a) of the Securities Exchange Act of 1934 as a bank from which it is lawful for any member of a national securities exchange, or any broker or dealer who transacts a business in securities through the medium of any such member, to borrow, in ordinary course of business as a broker or dealer, on securities (in addition to exempted securities as defined in such Act) registered on a national securities exchange, or (2) in the case of a foreign bank, to issue irrevocable letters of credit as security for a borrowing of securities pursuant to section 220.16 of Regulation T (12 CFR 220.16) the undersigned represents and agrees as follows:

1. That it is a "bank" within the meaning of that term as defined in the Securities Exchange Act of 1934; that it is organized under the laws of

_____;
(Indicate state for domestic bank or country for foreign bank)

that it is not a member of the Federal Reserve System; and that it has its principal place of business at

_____.

2. That it will henceforth comply with all provisions of the Securities Exchange Act of 1934, the Federal Reserve Act, as amended, and the Banking Act of 1933, which are applicable to banks having membership in the Federal Reserve System and which relate to the use of credit to finance transactions in securities, and with such rules and regulations as may be prescribed pursuant to such provisions of law or for the purpose of preventing evasions thereof.

3. That this agreement shall be submitted to: (1) in the case of a non-member bank with its principal place of business

in the United States, the Federal Reserve Bank of the district in which such bank has its principal place of business, and (2) in the case of a nonmember bank with its principal place of business outside the United States and branches or agencies within the United States, to the Federal Reserve Bank of New York or the Federal Reserve Bank of San Francisco.

4. That this agreement shall be effective on the date of issuance of the certificate issued by the appropriate Federal Reserve Bank and shall thereafter be binding upon the undersigned until terminated as provided by law.
5. That upon the termination of this agreement it will promptly surrender to the Board of Governors of the Federal Reserve System every certificate which shall have been issued by the said Board or any agent thereof in respect of such agreement.

Executed in duplicate this

_____ day of _____, 19____

(SEAL)

By _____
Authorized officer, agent or partner - indicate title or designation

Print or type name

Attest:

Secretary

RESOLUTION

(Inapplicable if qualifying bank is partnership)

Resolved that _____, the _____
of _____

(hereinafter in this resolution referred to as the "Bank") be and hereby is authorized and directed, for and in the name of the Bank to execute and file with the Board of Governors of the Federal Reserve System an agreement in the form prescribed by said Board pursuant to the provisions of section 8(a) of the Securities Exchange Act of 1934, in order to qualify the Bank as a bank not having membership in the

Federal Reserve System from which any member of a national securities exchange or any broker or dealer who transacts a business in securities through the medium of any such member may borrow, in the ordinary course of business as a broker or dealer, on securities (in addition to exempted securities as defined in such Act) registered on a national securities exchange.

CERTIFICATE

(Inapplicable if qualifying bank is partnership)

I hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the

_____ of _____, at a
Board of directors or other governing body -- indicate title Name of bank
_____ meeting duly called and held at _____ on the
Regular or Special _____ day of _____, 19____, at which meeting a quorum was present and acting throughout.

Date Secretary
Print or type name

Form T-4—Purpose Statement

FR T-4
OMB No. 7100-0019
Approval expires July 31, 1998

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Statement of Purpose for an Extension of Credit by a Creditor
(Federal Reserve Form T-4)

Name of Creditor

This report is required by law (15 U.S.C. 78g and 78w; 12 CFR 220).

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time to gather and maintain data on the required form and to review instructions and complete the information

collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0019), Washington, D.C. 20503.

Instructions

1. This form must be completed only if the purpose of the credit being extended is *not* to purchase, carry, or trade in securities and the credit is in excess of that otherwise permitted under Regulation T. (See § 220.9(b)).
2. Please print or type (if space is inadequate, attach separate sheet).

Part I To be completed by customer(s)

1. What is the amount of the credit being extended? _____
2. The borrower acknowledges that no part of this credit will be used to purchase, carry, or trade in securities. The purpose of the credit is described in detail as follows:

3. Are any of the securities listed in Part II to be delivered, or have any such securities been delivered from a bank, broker, dealer, or other person on a "delivery against payment" basis? Yes No

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete.

Signed:

Signed:

Borrower's signature

Date

Borrower's signature

Date

Print or type name

Print or type name

This form should not be signed if blank.

A borrower who falsely certifies the purpose of a credit on this form or otherwise willfully or intentionally evades the provisions of Regulation T will also violate Federal Reserve Regulation X, "Borrowers of Securities Credit".

Part II To be completed by creditor

The following is a listing of collateral, if any, securing this credit.

1. Collateral consisting of securities with loan value under Regulation T (refer to the Supplement to Regulation T).

No. of shares or other unit	Itemize separately by issue	Market price	Date and source of valuation (See note below)	Total market value per issue

2. Collateral consisting of securities having no loan value under Regulation T.

No. of shares or other unit	Itemize separately by issue	Market price	Date and source of valuation (See note below)	Total market value per issue

3. Other collateral.

Itemize	Current market value	Date and source of valuation (See note below)	Good faith loan value

Note: Creditor need not complete "Date and source of valuation" if the market value was obtained from regularly published or disseminated information in either a journal of general circulation or an automated quotation system.

I am a duly authorized representative of the creditor. I have read this form and any attachments, and have accepted the customer's statement in Part I in good faith as defined below,* and I certify that to the best of my knowledge and belief, all the information given is true, accurate, and complete.

Signed:

Date _____

Authorized representative's signature _____

Title _____

Print or type name _____

* To accept the customer's statement in good faith, the duly authorized representative of the creditor must be alert to the circumstances surrounding the credit and, if in possession of any information that would cause a prudent person not to accept the statement without inquiry, must have investigated and be satisfied that the statement is truthful. Among the facts which would require such investigation are receipt of the statement through the mail or from a third party.

This form must be retained by the lender for three years after the credit is extinguished.



Regulation U

Credit by Banks or Persons Other Than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stocks

12 CFR 221; as revised effective April 1, 1998

SECTION 221.1—Authority, Purpose, and Scope

(a) *Authority.* Regulation U (this part*) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the act) (15 USC 78a et seq.).

(b) *Purpose and scope.*

(1) This part imposes credit restrictions upon persons other than brokers or dealers (hereinafter lenders) that extend credit for the purpose of buying or carrying margin stock if the credit is secured directly or indirectly by margin stock. Lenders include "banks" (as defined in section 221.2) and other persons who are required to register with the Board under section 221.3(b). Lenders may not extend more than the maximum loan value of the collateral securing such credit, as set by the Board in section 221.7 (the supplement).

(2) This part does not apply to clearing agencies regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission that accept deposits of margin stock in connection with—

(i) the issuance of, or guarantee of, or the clearance of transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) the guarantee of contracts for the purchase or sale of a commodity for future delivery or options on such contracts.

(3) This part does not apply to credit extended to an exempted borrower.

(c) *Availability of forms.* The forms referenced in this part are available from the Federal Reserve Banks.

SECTION 221.2—Definitions

The terms used in this part have the meanings given them in section 3(a) of the act or as defined in this section as follows:

Affiliate means—

(1) For banks:

(i) any bank holding company of which a bank is a subsidiary within the meaning of the Bank Holding Company Act of 1956, as amended (12 USC 1841(d));

(ii) any other subsidiary of such bank holding company; and

(iii) any other corporation, business trust, association, or other similar organization that is an affiliate as defined in section 2(b) of the Banking Act of 1933 (12 USC 221a(c)).

(2) For nonbank lenders, *affiliate* means any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the lender.

Bank.

(1) *Bank* has the meaning given to it in section 3(a)(6) of the act (15 USC 78c(a)(6)) and includes—

(i) any subsidiary of a bank;

(ii) any corporation organized under section 25A of the Federal Reserve Act (12 USC 611); and

(iii) any agency or branch of a foreign bank located within the United States.

(2) *Bank* does not include—

(i) any savings and loan association,

(ii) any credit union,

(iii) any lending institution that is an instrumentality or agency of the United States, or

(iv) any member of a national securities exchange.

Carrying credit is credit that enables a customer to maintain, reduce, or retire indebtedness originally incurred to purchase a security that is currently a margin stock.

* Code of Federal Regulations, title 12, chapter II, part 221.

Current market value of—

(1) a security means—

- (i) if quotations are available, the closing sale price of the security on the preceding business day, as appearing on any regularly published reporting or quotation service; or
- (ii) if there is no closing sale price, the lender may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or
- (iii) if the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

(2) any other collateral means a value determined by any reasonable method.

Customer excludes an exempted borrower and includes any person or persons acting jointly, to or for whom a lender extends or maintains credit.

Examining authority means—

- (1) the national securities exchange or national securities association of which a broker or dealer is a member; or
- (2) if a member of more than one self-regulatory organization, the organization designated by the Securities and Exchange Commission as the examining authority for the broker or dealer.

Exempted borrower means a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who—

- (1) maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer;
- (2) earns at least \$10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or
- (3) earns at least 10 percent of its gross revenues on an annual basis from transactions with persons other than brokers, deal-

ers, and persons associated with a broker-dealer.

Good faith with respect to—

- (1) the loan value of collateral, means that amount (not exceeding 100 percent of the current market value of the collateral) which a lender, exercising sound credit judgment, would lend, without regard to the customer's other assets held as collateral in connection with unrelated transactions;
- (2) making a determination or accepting a statement concerning a borrower means that the lender or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

In the ordinary course of business means occurring or reasonably expected to occur in carrying out or furthering any business purpose, or in the case of an individual, in the course of any activity for profit or the management or preservation of property.

Indirectly secured—

- (1) includes any arrangement with the customer under which—
 - (i) the customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or
 - (ii) the exercise of such right is or may be cause for accelerating the maturity of the credit.
- (2) does not include such an arrangement if—
 - (i) after applying the proceeds of the credit, not more than 25 percent of the value (as determined by any reasonable method) of the assets subject to the arrangement is represented by margin stock;
 - (ii) it is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another lender that is not an affiliate of the lender;

(iii) the lender holds the margin stock only in the capacity of custodian, depository, or trustee, or under similar circumstances, and, in good faith, has not relied upon the margin stock as collateral; or
 (iv) the lender, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the particular credit.

Lender means—

- (1) any bank; or
- (2) any person subject to the registration requirements of this part.

Margin stock means—

- (1) any equity security registered or having unlisted trading privileges on a national securities exchange;
- (2) any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);
- (3) any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;
- (4) any warrant or right to subscribe to or purchase a margin stock; or
- (5) any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 USC 80a-8), other than—
 - (i) a company licensed under the Small Business Investment Act of 1958, as amended (15 USC 661); or
 - (ii) a company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 USC 78c(a)(12)); or
 - (iii) a company which issues face-amount certificates as defined in 15 USC 80a-2(a)(15), but only with respect of such securities; or
 - (iv) a company which is considered a money market fund under SEC Rule 2a-7 (17 CFR 270.2a-7).

Maximum loan value is the percentage of current market value assigned by the Board under section 221.7 (the supplement) to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of its

current market value. Puts, calls, and combinations thereof that do not qualify as margin stock have no loan value. All other collateral has good faith loan value.

Nonbank lender means any person subject to the registration requirements of this part.

Purpose credit is any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock.

SECTION 221.3—General Requirements

(a) *Extending, maintaining, and arranging credit.*

(1) *Extending credit.* No lender, except a plan lender, as defined in section 221.4(a), shall extend any purpose credit, secured directly or indirectly by margin stock, in an amount that exceeds the maximum loan value of the collateral securing the credit.

(2) *Maintaining credit.* A lender may continue to maintain any credit initially extended in compliance with this part, regardless of—

- (i) reduction in the customer's equity resulting from change in market prices;
- (ii) change in the maximum loan value prescribed by this part; or
- (iii) change in the status of the security (from nonmargin to margin) securing an existing purpose credit.

(3) *Arranging credit.* No lender may arrange for the extension or maintenance of any purpose credit, except upon the same terms and conditions under which the lender itself may extend or maintain purpose credit under this part.

(b) *Registration of nonbank lenders; termination of registration; annual report.*

(1) *Registration.* Every person other than a person subject to part 220 of this chapter or a bank who, in the ordinary course of business, extends or maintains credit secured, directly or indirectly, by any margin stock shall register on Federal Reserve Form FR G-1 (OMB control number 7100-0011) within 30 days after the end of any calendar quarter during which—

- (i) the amount of credit extended equals \$200,000 or more; or

(ii) the amount of credit outstanding at any time during that calendar quarter equals \$500,000 or more.

(2) *Deregistration.* A registered nonbank lender may apply to terminate its registration, by filing Federal Reserve Form FR G-2 (OMB control number 7100-0011), if the lender has not, during the preceding six calendar months, had more than \$200,000 of such credit outstanding. Registration shall be deemed terminated when the application is approved by the Board.

(3) *Annual report.* Every registered nonbank lender shall, within 30 days following June 30 of every year, file Form FR G-4 (OMB control number 7100-0011).

(4) *Where to register and file applications and reports.* Registration statements, applications to terminate registration, and annual reports shall be filed with the Federal Reserve Bank of the District in which the principal office of the lender is located.

(c) *Purpose statement.*

(1) *General rule.*

(i) *Banks.* Except for credit extended under paragraph (c)(2) of this section, whenever a bank extends credit secured directly or indirectly by any margin stock, in an amount exceeding \$100,000, the bank shall require its customer to execute Form FR U-1 (OMB No. 7100-0115), which shall be signed and accepted by a duly authorized officer of the bank acting in good faith.

(ii) *Nonbank lenders.* Except for credit extended under paragraph (c)(2) of this section or section 221.4, whenever a nonbank lender extends credit secured directly or indirectly by any margin stock, the nonbank lender shall require its customer to execute Form FR G-3 (OMB control number 7100-0018), which shall be signed and accepted by a duly authorized representative of the nonbank lender acting in good faith.

(2) *Purpose statement for revolving-credit or multiple-draw agreements or financing of securities purchases on a payment-against-delivery basis.*

(i) *Banks.* If a bank extends credit, secured directly or indirectly by any margin

stock, in an amount exceeding \$100,000, under a revolving-credit or other multiple-draw agreement, Form FR U-1 must be executed at the time the credit arrangement is originally established and must be amended as described in paragraph (c)(2)(iv) of this section for each disbursement if all of the collateral for the agreement is not pledged at the time the agreement is originally established.

(ii) *Nonbank lenders.* If a nonbank lender extends credit, secured directly or indirectly by any margin stock, under a revolving-credit or other multiple-draw agreement, Form FR G-3 must be executed at the time the credit arrangement is originally established and must be amended as described in paragraph (c)(2)(iv) of this section for each disbursement if all of the collateral for the agreement is not pledged at the time the agreement is originally established.

(iii) *Collateral.* If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if—

- (A) the maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed; or
- (B) at the end of any day on which credit is extended under the agreement, the lender calls for additional collateral sufficient to bring the credit into compliance with section 221.7 (the supplement).

(iv) *Amendment of purpose statement.* For any purpose credit disbursed under the agreement, the lender shall obtain and attach to the executed Form FR U-1 or FR G-3 a current list of collateral which adequately supports all credit extended under the agreement.

(d) *Single-credit rule.*

(1) All purpose credit extended to a customer shall be treated as a single credit, and all the collateral securing such credit shall be considered in determining whether or not the credit complies with this part, except that syndicated loans need not be aggre-

gated with other unrelated purpose credit extended by the same lender.

(2) A lender that has extended purpose credit secured by margin stock may not subsequently extend unsecured purpose credit to the same customer unless the combined credit does not exceed the maximum loan value of the collateral securing the prior credit.

(3) If a lender extended unsecured purpose credit to a customer prior to the extension of purpose credit secured by margin stock, the credits shall be combined and treated as a single credit solely for the purposes of the withdrawal and substitution provision of paragraph (f) of this section.

(4) If a lender extends purpose credit secured by any margin stock and nonpurpose credit to the same customer, the lender shall treat the credits as two separate loans and may not rely upon the required collateral securing the purpose credit for the nonpurpose credit.

(e) *Exempted borrowers.*

(1) An exempted borrower that has been in existence for less than one year may meet the definition of exempted borrower based on a six-month period.

(2) Once a member of a national securities exchange or registered broker or dealer ceases to qualify as an exempted borrower, it shall notify its lenders of this fact. Any new extensions of credit to such a borrower, including rollovers, renewals, and additional draws on existing lines of credit, are subject to the provisions of this part.

(f) *Withdrawals and substitutions.*

(1) A lender may permit any withdrawal or substitution of cash or collateral by the customer if the withdrawal or substitution would not—

- (i) cause the credit to exceed the maximum loan value of the collateral; or
- (ii) increase the amount by which the credit exceeds the maximum loan value of the collateral.

(2) For purposes of this section, the maximum loan value of the collateral on the day of the withdrawal or substitution shall be used.

(g) *Exchange offers.* To enable a customer to participate in a reorganization, recapitalization, or exchange offer that is made to holders of an issue of margin stock, a lender may permit substitution of the securities received. A nonmargin, nonexempted security acquired in exchange for a margin stock shall be treated as if it is margin stock for a period of 60 days following the exchange.

(h) *Renewals and extensions of maturity.* A renewal or extension of maturity of a credit need not be considered a new extension of credit if the amount of the credit is increased only by the addition of interest, service charges, or taxes with respect to the credit.

(i) *Transfers of credit.*

(1) A transfer of a credit between customers or between lenders shall not be considered a new extension of credit if—

- (i) the original credit was extended by a lender in compliance with this part or by a lender subject to part 207 of this chapter in effect prior to April 1, 1998 (see part 207 appearing in the 12 CFR 200 to 219 edition revised as of January 1, 1997), in a manner that would have complied with this part;
- (ii) the transfer is not made to evade this part;
- (iii) the amount of credit is not increased; and
- (iv) the collateral for the credit is not changed.

(2) Any transfer between customers at the same lender shall be accompanied by a statement by the transferor customer describing the circumstances giving rise to the transfer and shall be accepted and signed by a representative of the lender acting in good faith. The lender shall keep such statement with its records of the transferee account.

(3) When a transfer is made between lenders, the transferee shall obtain a copy of the Form FR U-1 or Form FR G-3 originally filed with the transferor and retain the copy with its records of the transferee account. If no form was originally filed with the transferor, the transferee may accept in good faith a statement from the transferor describing the purpose of the loan and the collateral securing it.

(j) *Action for lender's protection.* Nothing in this part shall require a bank to waive or forego any lien or prevent a bank from taking any action it deems necessary in good faith for its protection.

(k) *Mistakes in good faith.* A mistake in good faith in connection with the extension or maintenance of credit shall not be a violation of this part.

SECTION 221.4—Employee Stock Option, Purchase, and Ownership Plans

(a) *Plan lender; eligible plan.*

(1) *Plan lender* means any corporation, (including a wholly owned subsidiary, or a lender that is a thrift organization whose membership is limited to employees and former employees of the corporation, its subsidiaries or affiliates) that extends or maintains credit to finance the acquisition of margin stock of the corporation, its subsidiaries, or affiliates under an eligible plan.

(2) *Eligible plan* means any employee stock option, purchase, or ownership plan adopted by a corporation and approved by its stockholders that provides for the purchase of margin stock of the corporation, its subsidiaries, or affiliates.

(b) *Credit to exercise rights under or finance an eligible plan.*

(1) If a plan lender extends or maintains credit under an eligible plan, any margin stock that directly or indirectly secured that credit shall have good faith loan value.

(2) Credit extended under this section shall be treated separately from credit extended under any other section of this part except section 221.3(b)(1) and (b)(3).

(c) *Credit to ESOPs.* A nonbank lender may extend and maintain purpose credit without regard to the provisions of this part, except for section 221.3(b)(1) and (b)(3), if such credit is extended to an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code, as amended (26 USC 401).

SECTION 221.5—Special-Purpose Loans to Brokers and Dealers

(a) *Special-purpose loans.* A lender may extend and maintain purpose credit to brokers and dealers without regard to the limitations set forth in sections 221.3 and 221.7, if the credit is for any of the specific purposes and meets the conditions set forth in paragraph (c) of this section.

(b) *Written notice.* Prior to extending credit for more than a day under this section, the lender shall obtain and accept in good faith a written notice or certification from the borrower as to the purposes of the loan. The written notice or certification shall be evidence of continued eligibility for the special-credit provisions until the borrower notifies the lender that it is no longer eligible or the lender has information that would cause a reasonable person to question whether the credit is being used for the purpose specified.

(c) *Types of special-purpose credit.* The types of credit that may be extended and maintained on a good faith basis are as follows:

(1) *Hypothecation loans.* Credit secured by hypothecated customer securities that, according to written notice received from the broker or dealer, may be hypothecated by the broker or dealer under Securities and Exchange Commission (SEC) rules.

(2) *Temporary advances in payment-against-delivery transactions.* Credit to finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid upon completion of the transaction.

(3) *Loans for securities in transit or transfer.* Credit to finance securities in transit or surrendered for transfer, if the credit is to be repaid upon completion of the transaction.

(4) *Intraday loans.* Credit to enable a broker or dealer to pay for securities, if the credit is to be repaid on the same day it is extended.

(5) *Arbitrage loans.* Credit to finance proprietary or customer bona fide arbitrage transactions. For the purpose of this section "bona fide arbitrage" means—

(i) purchase or sale of a security in one market, together with an offsetting sale or

purchase of the same security in a different market at nearly the same time as practicable, for the purpose of taking advantage of a difference in prices in the two markets; or

(ii) purchase of a security that is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security, together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the price of the two securities.

(6) *Market maker and specialist loans.* Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as a market maker or specialist.

(7) *Underwriter loans.* Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as an underwriter.

(8) *Emergency loans.* Credit that is essential to meet emergency needs of the broker-dealer business arising from exceptional circumstances.

(9) *Capital-contribution loans.*

(i) Credit that the Board has exempted by order upon a finding that the exemption is necessary or appropriate in the public interest or for the protection of investors, provided the Securities Investor Protection Corporation certifies to the Board that the exemption is appropriate; or

(ii) credit to a customer for the purpose of making a subordinated loan or capital contribution to a broker or dealer in conformity with the SEC's net-capital rules and the rules of the broker's or dealer's examining authority, provided—

(A) the customer reduces the credit by the amount of any reduction in the loan or contribution to the broker or dealer; and

(B) the credit is not used to purchase securities issued by the broker or dealer in a public distribution.

(10) *Credit to clearing brokers or dealers.* Credit to a member of a national securities exchange or registered broker or dealer

whose nonproprietary business is limited to financing and carrying the accounts of registered market makers.

SECTION 221.6—Exempted Transactions

A bank may extend and maintain purpose credit without regard to the provisions of this part if such credit is extended—

(a) to any bank;

(b) to any foreign banking institution;

(c) outside the United States;

(d) to an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code (26 USC 401);

(e) to any plan lender as defined in section 221.4(a) to finance an eligible plan as defined in section 221.4(b), provided the bank has no recourse to any securities purchased pursuant to the plan;

(f) to any customer, other than a broker or dealer, to temporarily finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid in the ordinary course of business upon completion of the transaction and is not extended to enable the customer to pay for securities purchased in an account subject to part 220 of this chapter;

(g) against securities in transit, if the credit is not extended to enable the customer to pay for securities purchased in an account subject to part 220 of this chapter; or

(h) to enable a customer to meet emergency expenses not reasonably foreseeable, and if the extension of credit is supported by a statement executed by the customer and accepted and signed by an officer of the bank acting in good faith. For this purpose, emergency expenses include expenses arising from circumstances such as the death or disability of the customer, or some other change in circumstances involving extreme hardship, not reasonably foreseeable at the time the credit was extended. The opportunity to realize monetary gain or to avoid loss is not a "change in circumstances" for this purpose.

**SECTION 221.7—Supplement:
Maximum Loan Value of Margin Stock
and Other Collateral**

(a) *Maximum loan value of margin stock.* The maximum loan value of any margin stock is 50 percent of its current market value.

(b) *Maximum loan value of nonmargin stock*

and all other collateral. The maximum loan value of nonmargin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value.

(c) *Maximum loan value of options.* Except for options that qualify as margin stock, puts, calls, and combinations thereof have no loan value.

Form U-1—Purpose Statement

FR U-1
OMB No. 7100-0115
Approval expires July 31, 1998

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
Statement of Purpose for an Extension of Credit Secured by Margin Stock
(Federal Reserve Form U-1)

Name of Bank

This report is required by law (15 U.S.C. §178g and 78w; 12 CFR 221).

Public reporting burden for this collection of information is estimated to average 4.2 minutes (0.07 hours) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20561; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0115), Washington, D.C. 20503.

Instructions

- This form must be completed when a bank extends credit in excess of \$100,000 secured directly or indirectly, in whole or in part, by any margin stock.
- The term "margin stock" is defined in Regulation U (12 CFR 221) and includes, principally: (1) stocks that are registered on a national securities exchange or that are on the Federal Reserve Board's List of Marginable OTC Stocks; (2) debt securities (bonds) that are convertible into margin stocks; (3) any over-the-counter security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security); and (4) shares of most mutual funds, unless 95 per cent of the assets of the fund are continuously invested in U.S. government, agency, state, or municipal obligations.
- Please print or type (if space is inadequate, attach separate sheet).

Part I To be completed by borrower(s)

1. What is the amount of the credit being extended? _____

2. Will any part of this credit be used to purchase or carry margin stock? Yes No

If the answer is "no," describe the specific purpose of the credit. _____

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete, and that the margin stock and any other securities collateralizing this credit are authentic, genuine, unaltered, and not stolen, forged, or counterfeit.

Signed: _____

Signed: _____

Borrower's signature

Date

Borrower's signature

Date

Print or type name

Print or type name

This form should not be signed if blank.

A borrower who falsely certifies the purpose of a credit on this form or otherwise willfully or intentionally evades the provisions of Regulation U will also violate Federal Reserve Regulation X, "Borrowers of Securities Credit".

Part II To be completed by bank only if the purpose of the credit is to purchase or carry margin securities (Part I(2) answered "yes")

1. List the margin stock securing this credit; do not include debt securities convertible into margin stock. The maximum loan value of margin stock is 50 per cent of its current market value under the current Supplement to Regulation U.

No. of shares	Issue	Market price per share	Date and source of valuation (See note below)	Total market value per issue

2. List the debt securities convertible into margin stock securing this credit. The maximum loan value of such debt securities is 50 per cent of the current market value under the current Supplement to Regulation U.

Principal amount	Issue	Market price	Date and source of valuation (See note below)	Total market value per issue

3. List other collateral including nonmargin stock securing this credit.

Describe briefly	Market price	Date and source of valuation (See note below)	Good faith loan value

Note: Bank need not complete "Date and source of valuation" if the market value was obtained from regularly published information in a journal of general circulation or an automated quotation system.

Part III To be signed by a bank officer in all instances.

I am a duly authorized representative of the bank and understand that this credit secured by margin stock may be subject to the credit restrictions of Regulation U. I have read this form and any attachments, and I have accepted the customer's statement in Part I in good faith as required by Regulation U^{*}; and I certify that to the best of my knowledge and belief, all the information given is true, accurate, and complete. I also certify that if any securities that directly secure the credit are not or will not be registered in the name of the borrower or its nominee, I have or will cause to have examined the written consent of the registered owner to pledge such securities. I further certify that any securities that have been or will be physically delivered to the bank in connection with this credit have been or will be examined, that all validation procedures required by bank policy and the Securities Exchange Act of 1934 (section 17(f), as amended) have been or will be performed, and that I am satisfied to the best of my knowledge and belief that such securities are genuine and not stolen or forged and their faces have not been altered.

Signed:

Date _____

Bank officer's signature _____

Title _____

Print or type name _____

* To accept the customer's statement in good faith, the officer of the bank must be alert to the circumstances surrounding the credit and, if in possession of any information that would cause a prudent person not to accept the statement without inquiry, must have investigated and be satisfied that the statement is truthful. Among the facts which would require such investigation are receipt of the statement through the mail or from a third party.

This form must be retained by the lender for three years after the credit is extinguished.

Form G-1—Registration Statement

FR G 1
OMB No. 7100-0011
Approval expires July 31, 1998

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Registration Statement For Persons Who Extend Credit Secured by
Margin Stock (Other Than Banks, Brokers or Dealers)
(Federal Reserve Form G-1)

This registration statement is required by law (15 U.S.C. 76g and 78w; 12 C.F.R. 207).

The Federal Reserve Board regards the information provided by each respondent as confidential. If it should be determined subsequently that any information collected on this form must be released, respondents will be notified.

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C. Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0011), Washington, D.C. 20503.

Name of registrant: _____
IRS Identification No. *

Name under which business is conducted, if different from above: _____

Address of principal place of business:
(Do not use P.O. Box No.)
Street _____ County _____

City _____ State _____ ZIP Code _____

Mailing address, if different from above: _____

Street _____

City _____ State _____ ZIP Code _____

GENERAL INSTRUCTIONS

Who must file: Section 207.3(a) of Federal Reserve Regulation G requires that FR Form G-1 be completed by every person (other than commercial banks, brokers or dealers) who during any calendar quarter extends a total of \$200,000 or more, or has outstanding a total of \$500,000 or more, in credit secured directly or indirectly, in whole or in part, by collateral that includes any margin stock.**When and where to file:** The form should be filed in duplicate with the Federal Reserve Bank of the district in which the principal office of subject person is located within 30 days following the end of such quarter in which credit has been extended or is outstanding in accordance with Section 207.3(a). This registration statement will remain in effect until a FR Form G-2 (deregistration statement) is approved by the Board of Governors of the Federal Reserve System.**What to file:** All persons subject to the registration requirements of Section 207.3(a) should (i) supply the background information specified below; (ii) complete Schedule A; and (iii) submit two copies of a balance sheet, certified by an independent public accountant, for the registrant's latest fiscal year. If the registrant is subject to supervision by a State or Federal regulatory authority, a copy of the latest balance sheet filed with such authority may be used. If neither is available, the registrant should complete Schedule B on page 4.

* A registrant who is an individual is not required to disclose his or her Social Security number.

Registration forms will be returned to registrants for corrections if all items have not been answered in the manner required or if the forms are otherwise unacceptable for filing.

DEFINITIONS

Terms used in this form are explained below. Precise definitions may be found in Section 207.2 of Regulation G.

Person: Any individual, corporation, partnership, association, joint stock company, business trust, or unincorporated organization.**Purpose credit:** Credit extended for the purpose of purchasing or carrying margin stock, or to reduce or retire indebtedness previously incurred for that purpose.**In the ordinary course of business:** Occuring or reasonably expected to occur from time to time in the course of any activity of a person for profit or the management and preservation of property or, in the case of a person other than an individual, carrying out or in furtherance of any business purpose.**Margin stock:** Includes (1) stocks registered on a national securities exchange, stocks on the Federal Reserve Board's List of Marginable OTC Stocks, or any OTC security designated for trading in the National Market System, (2) debt securities that are convertible into, or carry a warrant or right to subscribe to or purchase margin stock, (3) any such warrant or right, and (4) shares of most mutual funds.**Indirectly secured:** In general, credit is indirectly secured by margin stock if there is an understanding between the borrower and the lender (1) which is designated to make the margin stock more available to the lender in case of default than to the borrower's other creditors, or (2) which limits the borrower from exercising full dominion over the margin stock to sell, pledge, or donate them, or determining where they shall be placed physically.

Background Information

1. Principal lines of business:

2. Registrant is: (check one)

- Sole proprietorship
 Partnership
 Corporation

- Private investor
 Other (specify)

a. If registrant is a sole proprietor, private investor, or other, state full residence address:

b. If registrant is a corporation, state date and place of incorporation:

Date: _____ Place: _____

c. Person responsible for maintaining records in connection with Regulation G:

Name: _____ Title: _____

Telephone Number (include area code): _____

3. If any of the accounts or records of registrant are kept or maintained by anyone other than the person named in 2(c), furnish the name and address of the other individual, firm, or organization:

4. a. Does any person not named in items 2(c) or 3 above exercise or have power to exercise a controlling influence over the management or policies of registrant, directly or indirectly, through stock ownership, agreement, or otherwise?

- Yes No

b. If "yes", state the name of such person and describe the agreement, arrangement, or nature of the controlling influence:

5. a. Does the registrant extend credit in connection with an employee stock option or stock purchase plan pursuant to the special "plan-lender" provision set forth in Section 207.5(a) of Regulation G? If so, submit two copies of documents establishing the plan, a prospectus, and other information which supports adherence to plan-lender limitations.

- Yes No

5. b. Does the registrant extend credit to an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401), as set forth in Section 207.5(c) of Regulation G? If so, submit two copies of documents establishing the plan and any other pertinent supporting information.

- Yes No

Schedule A—Securities Credit

As of _____, 19____

A. Credit to purchase or carry margin stock (Purpose Loans):

1. Secured directly by margin stock:

- a. Listed stocks and OTC margin stocks
- b. Debt securities convertible into margin stock
- c. Mutual funds and other margin stock

2. Secured indirectly by margin stock

3. TOTAL (Purpose Credit)

B. Other credit (Nonpurpose Loans):

1. Secured directly by margin stock:

- a. Listed stocks and OTC margin stocks
- b. Debt securities convertible into margin stock
- c. Mutual funds and other margin stock

2. Secured indirectly by margin stock

3. TOTAL (Nonpurpose Credit)

I ¹ Total credit outstanding at end of quarter (dollars)			II ² Credit extended during quarter (dollars)		
Mill	Thou	Dollars	Mill	Thou	Dollars

1. "Credit outstanding" (Column I) includes credit extended by the registrant during the quarter covered by this report, and during previous quarters, that has not been extinguished before the end of the quarter covered by this report.

2. "Credit extended" (Column II) is credit extended by the registrant at any time during the quarter covered by this report. Column II includes new credit extended during the quarter regardless of whether such credit was extinguished at the end of the quarter. An increase in an existing loan is new credit.

Schedule B—Balance Sheet

As of _____, 19_____

This schedule is to be completed only by lenders not submitting corporate balance sheets certified by an independent public accountant or used to meet reporting requirements of a State or Federal regulatory authority.

(\$ Thousands)

ASSETS		LIABILITIES AND NET WORTH	
Cash and bank deposits	_____	Short-term bank borrowings	_____
Trade accounts and notes receivable (net allowance for bad debts of _____)	_____	Other notes and accounts payable	_____
Other accounts and notes receivable (include credit to executives and employees)	_____	Long term debt	_____
Marketable securities	_____	All other liabilities	_____
Inventories	_____	TOTAL LIABILITIES	_____
Investments in non-consolidated subsidiaries	_____	Capital stock	_____
Fixed assets (net of depreciation)	_____	Additional paid-in capital	_____
All other assets	_____	Retained earnings/undivided profits	_____
TOTAL ASSETS	=====	Total Equity Capital ¹	_____
		TOTAL LIABILITIES AND EQUITY CAPITAL	=====

1. Registrants not reporting capital stock, additional paid-in-capital or retained earnings/undivided profits must nevertheless indicate total equity capital.

Certification

The registrant filing this registration form and any attachments thereto and the person by whom it is executed represent hereby that all information contained therein is true and complete.

Date _____

Signature of sole proprietor, general partner, managing agent, or principal officer _____

Telephone number (including area code) _____

Print or type name _____

Title _____

This mandatory report is needed to elicit certain background and financial information about a Regulation G lender and the types and amount of credit activities engaged in that are secured by margin stock.

Honest, accurate, and timely statements are required by law
(15 U.S.C. §78ff; 18 U.S.C. §1001)

Form G-2—Deregistration Statement

FR G-2
OMB No. 7100-0011
Approval expires July 31, 1998

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
Deregistration Statement For
Persons Registered Pursuant to Regulation G
(Federal Reserve Form G-2)
A. For use by Noncorporate Registrants

This deregistration statement is required by law (15 U.S.C. 78g and 78w, 12 C.F.R. 207).

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed,

and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0011), Washington, D.C. 20503.

Certificate

I (We), doing business under the name _____

IRS Identification No. *

hereby certify that I (we) have not, during the preceding six calendar months, had a total of \$200,000 or more of credit outstanding secured directly or indirectly by margin stock.

I (We) understand that if I (we), in the future, extend a total of \$200,000 or more during any calendar quarter, or have

outstanding at any time during a calendar quarter a total of \$500,000 or more, in credit that is secured directly or indirectly by collateral that includes any margin stock, I (we) shall within 30 days following the end of such calendar quarter reregister and remain registered for at least six months with the Board of Governors of the Federal Reserve System by filing Federal Reserve Form G-1 with the Federal Reserve Bank of the district in which my (our) principal office is located.

This certification is given in connection with an application for termination of registration pursuant to Section 207.3(a) of Regulation G of the Board of Governors of the Federal Reserve System.

Signature(s) _____

Date _____

Print or type name(s) and title(s) _____

Name of firm _____

Telephone number (including area code) _____

*A registrant who is an individual is not required to disclose his or her Social Security number.

Honest, accurate, and timely statements are required by law
(15 U.S.C. §78ff; 18 U.S.C. §1001)

FR G-2
OMB No. 7100-0011
Approval expires July 31, 1998

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
Deregistration Statement For
Persons Registered Pursuant to Regulation G
(Federal Reserve Form G-2)
B. For use by Corporate Registrants

This deregistration statement is required by law (15 U.S.C. 78g and 78w; 12 C.F.R. 207).

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed,

and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0011), Washington, D.C. 20503.

Officer's Certificate

I hereby certify that _____

Name of corporation

IRS Identification No.

("Corporation") has not, during the preceding six calendar months, had a total of \$200,000 or more of credit outstanding secured directly or indirectly by margin stock.

It is understood that if the Corporation shall, in the future, extend a total of \$200,000 or more during any calendar

quarter, or has outstanding at any time during a calendar quarter a total of \$500,000 or more, in credit that is secured directly or indirectly by collateral that includes any margin stock, the Corporation shall within 30 days following the end of such calendar quarter reregister and remain registered for at least six months with the Board of Governors of the Federal Reserve System by filing Federal Reserve Form G-1 with the Federal Reserve Bank of the district in which the principal office of the corporation is located.

This certification is given in connection with an application for termination of registration pursuant to Section 207.3(a) of Regulation G of the Board of Governors of the Federal Reserve System.

Signature of duly authorized officer

Date

Print or type name

Title

Telephone number (including area code)

Honest, accurate, and timely statements are required by law
(15 U.S.C. §78ff; 18 U.S.C. §1001)

Form G-3—Purpose Statement

FR G-3
OMB No. 7100-0018
Approval expires July 31, 1998

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Statement of Purpose for an Extension of Credit Secured by Margin
Stock by a Person Subject to Registration Under Regulation G
(Federal Reserve Form G-3)

Name of Lender _____

This form is required by law (15 U.S.C. 78g and 78w; 12 C.F.R. 207).

and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0011), Washington, D.C. 20503.

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed,

Instructions

1. This form must be completed when a lender subject to registration under Regulation G extends credit secured directly or indirectly, in whole or in part, by any margin stock.
2. The term "margin stock" is defined in Regulation G (12 CFR 207) and includes, principally: (1) stocks that are registered on a national securities exchange, stocks that are on the Federal Reserve Board's List of Marginable OTC Stocks, or any OTC security designated for trading in the National Market System; (2) debt securities (bonds) that are convertible into margin stock; and (3) shares of most mutual funds.
3. Please print or type (if space is inadequate, attach separate sheet).

Part I To be completed by borrower(s)

1. What is the amount of the credit being extended? _____

2. Will any part of this credit be used to purchase or carry margin securities? Yes No

If the answer is "no," describe the specific purpose of the credit _____

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete.

Signed:

Signed:

Borrower's signature _____ Date _____

Borrower's signature _____ Date _____

Print or type name _____

Print or type name _____

This form should not be signed if blank.

A borrower who falsely certifies the purpose of a credit on this form or otherwise willfully or intentionally evades the provisions of Regulation G will also violate Federal Reserve Regulation X, "Borrowers of Securities Credit".

Part II To be completed by lender only if the purpose of the credit is to purchase or carry margin securities (Part I(2) answered "yes")

1. List the margin stock securing this credit; do not include debt securities convertible into margin stock. The maximum loan value of margin stock is 50 per cent of its current market value under the current Supplement to Regulation G.

No. of shares	Issue	Market price per share	Date and source of valuation (See note below)	Total market value per issue

2. List the debt securities convertible into margin stock securing this credit. The maximum loan value of such debt securities is 50 per cent of the current market value under the current Supplement to Regulation G.

Principal amount	Issue	Market price	Date and source of valuation (See note below)	Total market value per issue

3. List other collateral including non-margin securities securing this credit.

Describe briefly	Market price	Date and source of valuation (See note below)	Good faith loan value

Note: Lender need not complete "Date and source of valuation" if the market value was obtained from regularly published information in a journal of general circulation or automated quotation system.

Part III To be signed by an authorized representative of the lender in all instances

I am a duly authorized representative of the lender and understand that this credit secured by margin stock may be subject to the credit restrictions of Regulation G. I have read this form and any attachments, and I have accepted the customer's statement in Part I in good faith as required by Regulation G*; and I certify that to the best of my knowledge and belief, all the information given is true, accurate, and complete.

Signed:

Date

Authorized representative's signature

Title

Print or type name

* To accept the customer's statement in good faith, the authorized representative of the lender must be alert to the circumstances surrounding the credit and, if in possession of any information that would cause a prudent person not to accept the statement without inquiry, must have investigated and be satisfied that the statement is truthful. Among the facts which would require such investigation are receipt of the statement through the mail or from a third party.

This form must be retained by the lender for three years after the credit is extinguished.

Form G-4—Annual Report

FR G-4
OMB No. 7100-0011
Approval expires July 31, 1998

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Annual Report (Federal Reserve Form G-4)

For the year ended June 30, 19 _____

This report is required by law (15 U.S.C. 78g and 78h; 12 C.F.R. 207).

The Federal Reserve Board regards the information provided by each respondent as confidential. If it should be determined subsequently that any information collected on this form must be released, respondents will be notified.

Public reporting burden for this collection of information is estimated to average 7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0011), Washington, D.C. 20503.

Name of registrant: _____
 IRS Identification No. * _____

Address of principal office: _____
 Street _____
 City _____ County _____
 State _____ ZIP Code _____

GENERAL INSTRUCTIONS

Who must file: Section 207.3(o) of the Federal Reserve Regulation G requires a report on Form G-4 to be filed by every person subject to the registration requirement of Section 207.3(a) of the rule. Any person registered under the regulation may apply for termination of registration by filing FR Form G-2 (see Section 207.3(a)), if such person has not, during the preceding six calendar months, had a total of \$200,000 or more of credit outstanding secured directly or indirectly by margin stock.

When and where to file: Form G-4 shall be filed, *in duplicate*, with the Federal Reserve Bank of the district in which the registrant's principal place of business is located, within 30 days following June 30 of each calendar year.

What to file: The registrant is required to file with this report two copies of the registrant's balance sheet, certified by an independent public accountant, as of the end of its most recent fiscal year. If a certified balance sheet is not available, registrant should file with this report a balance sheet in the form prescribed by Schedule B on FR Form G-1, or if subject to supervision by a State or Federal regulatory agency, the latest balance sheet filed with such agency.

*A registrant who is an individual is not required to disclose his or her Social Security number.

DEFINITIONS

Terms used in this form are explained below. Precise definitions may be found in Section 207.2 of Regulation G.

Person: Any individual, corporation, partnership, association, joint stock company, business trust, or unincorporated organization.

Registrant: Any person who is subject to the registration requirement of Section 207.3(a).

Purpose credit: Credit extended for the purpose of purchasing or carrying margin stock, or to reduce or retire indebtedness previously incurred for that purpose.

Margin stock: Includes (1) stocks registered on a national securities exchange, stocks on the Federal Reserve Board's List of Marginable OTC Stocks, or any OTC security designated for trading in the National Market System, (2) debt securities that are convertible into, or carry a warrant or right to subscribe to or purchase margin stock, (3) any such warrant or right, and (4) shares of most mutual funds.

Indirectly secured: In general, credit is indirectly secured by margin stock if there is an understanding between the borrower and the lender (1) which is designated to make the margin stock more available to the lender in case of default than to the borrower's other creditors, or (2) which limits the borrower from exercising full dominion over the margin stock to sell, pledge, or donate them, or determining where they shall be placed physically.

Instructions for Completing Schedule of Securities Credit

A. Report all Purpose Credit secured by margin stock extended during the reporting period, as well as all purpose credit secured by margin stock outstanding as of June 30, on Part A of the Schedule of Securities Credit.

B. Registrants reporting Purpose Credit secured by margin stock in Part A must also complete Part B if any nonpurpose credit was extended during the reporting period or is outstanding as of June 30.

C. Registrants *not* reporting Purpose Credit in Part A must

complete Part B if any nonpurpose credit was extended during the reporting period or is outstanding as of June 30.

D. Registrants who maintain records based upon fiscal quarters that do not coincide with calendar quarters have an option of reporting credit outstanding and extended in a slightly different manner. These registrants may report the annual data required by FR Form G-4 as of the year ended on either April 30 or May 31. A registrant reporting in this manner should change the date in Column I of the Schedule of Securities Credit to reflect the year end date used.

Employee Stock Option, Purchase, and Ownership Plan Credit

1. Is part or all of the credit extended pursuant to an employee stock option, purchase, or ownership plan?

 Yes

 No

2. A. If "yes," does the credit qualify under the special provisions set forth in Section 207.5 of Regulation G?

 Yes

 No

B. If credit reported in Column I of the Schedule of Securities Credit includes outstanding employee stock option, purchase, or ownership plan credit, please report the following:

i. Outstanding "Plan-Lender" credit pursuant to Section 207.5(a) \$ _____

ii. Outstanding credit to an ESOP pursuant to Section 207.5(c) \$ _____

3. Has any of the credit reported above been extended pursuant to a plan adopted since the submission of the last annual report?

 Yes

 No

If yes, please submit two copies of the plan and any supporting documents.

Schedule of Securities Credit

A. Credit to purchase or carry margin stock (Purpose Loans):

1. Secured directly by margin stock:

- a. Listed stocks and OTC margin stocks
- b. Debt securities convertible into margin stock
- c. Mutual funds and other margin stock

2. Secured indirectly by margin stock

3. TOTAL (Purpose Credit)

B. Other credit (Nonpurpose Loans):

1. Secured directly by margin stock:

- a. Listed stocks and OTC margin stocks
- b. Debt securities convertible into margin stock
- c. Mutual funds and other margin stock

2. Secured indirectly by margin stock

3. TOTAL (Nonpurpose Credit)

I ¹ Total credit outstanding as of June 30, ____ (dollars)			II ² Credit extended during reporting period (dollars)		
Mill	Thou	Dollars	Mill	Thou	Dollars

1. "Credit outstanding" (Column I) includes credit extended by the registrant during the year covered by this report, and during previous years, that has not been extinguished before the end of the year covered by this report.

2. "Credit extended" (Column II) is credit extended at any time during the year covered by this report. Column II includes all new credit extended during the year regardless of whether such credit was extinguished at the end of the year. An increase in an existing loan is new credit.

Changes in Background Information

For material included in background information, see the second page of FR Form G-1 Registration Statement:

Have there been any changes in background information since the previous G-4 report (G-1 report for a registrant filing its first G-4 report)?

 Yes

 No

If yes, describe any such changes pertaining to name, address, IRS Identification No., organizational structure (e.g., a sole proprietorship becoming incorporated), name of person responsible for maintaining Regulation G records, control, or location of records.

Certification

The registrant filing this annual report and any attachment thereto and the person by whom it is executed represent hereby that all information contained therein is true and complete.

Date

Signature of sole proprietor, general partner, managing agent, or principal officer

Telephone number (including area code)

Print or type name

Title

This mandatory report is needed to elicit certain background and financial information about a Regulation G lender and the types and amount of credit activities engaged in that are secured by margin stock.

Honest, accurate, and timely statements are required by law
(15 U.S.C. §78ff; 18 U.S.C. §1001)

Regulation X

Borrowers of Securities Credit

12 CFR 224; as amended effective April 1, 1998

SECTION 224.1—Authority, Purpose, and Scope

(a) *Authority and purpose.* Regulation X (this part*) is issued by the Board of Governors of the Federal Reserve System (the Board) under the Securities Exchange Act of 1934, as amended (the act) (15 USC 78a et seq.). This part implements section 7(f) of the act (15 USC 78g(f)), the purpose of which is to require that credit obtained within or outside the United States complies with the limitations of the Board's Margin Regulations T and U (12 CFR 220 and 221, respectively).

(b) *Scope and exemptions.* The act and this part apply the Board's margin regulations to United States persons and foreign persons controlled by or acting on behalf of or in conjunction with United States persons (hereinafter borrowers), who obtain credit outside the United States to purchase or carry United States securities, or within the United States to purchase or carry any securities (both types of credit are hereinafter referred to as purpose credit). The following borrowers are exempt from the act and this part:

- (1) any borrower who obtains purpose credit within the United States, unless the borrower willfully causes the credit to be extended in contravention of Regulation T or U;
- (2) any borrower whose permanent residence is outside the United States and who does not obtain or have outstanding, during any calendar year, a total of more than \$100,000 in purpose credit obtained outside the United States; and
- (3) any borrower who is exempt by order upon terms and conditions set by the Board.

SECTION 224.2—Definitions

The terms used in this part have the meanings given to them in sections 3(a) and 7(f) of the act, and in Regulations G, T, and U. Section

7(f) of the act contains the following definitions:

(a) "United States person" includes a person which is organized or exists under the laws of any state or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

(b) "United States security" means a security (other than an exempted security) issued by a person incorporated under the laws of any state, or whose principal place of business is within a state.

(c) "Foreign person controlled by a United States person" includes any noncorporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock.

SECTION 224.3—Margin Regulations to Be Applied by Nonexempted Borrowers

(a) *Credit transactions outside the United States.* No borrower shall obtain purpose credit from outside the United States unless it conforms to the following margin regulations:

- (1) Regulation T (12 CFR 220) if the credit is obtained from a foreign branch of a broker-dealer;
- (2) Regulation U (12 CFR 221) if the credit is obtained from a foreign branch of a bank, except for the requirement of a purpose statement (12 CFR 221.3(b) and (c)); and
- (3) Regulation U, as it applies to nonbank lenders, if the credit is obtained from any

* Code of Federal Regulations, title 12, chapter II, part 224.

other lender outside the United States, except for the requirement of a purpose statement (12 CFR 221.3(c)(1)(ii) and (c)(2)(ii)).

(b) *Credit transactions within the United States.* Any borrower who willfully causes credit to be extended in contravention of Regulations T and U (12 CFR 220 and 221), and who, therefore, is not exempted by section 224.1(b)(1) of this part, must conform the credit to the margin regulation that applies to the lender.

Securities Exchange Act of 1934

15 USC 78a et seq.*; 48 Stat. 881; Pub. L. 73-291 (June 6, 1934)

* * * * *

SECTION 3—Definitions and Application (15 USC 78c)

(a) *Definitions.* When used in this title, unless the context otherwise requires—

(1) The term “exchange” means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

* * * * *

(3) (A) The term “member” when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules. For purposes of sections 6(b)(1), 6(b)(4), 6(b)(6), 6(b)(7), 6(d), 17(d), 19(d), 19(e), 19(g), 19(h), and 21 of this title, the term “member” when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person

required by the Commission to comply with such rules pursuant to section 6(f) of this title.

(B) The term “member” when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules.

(4) The term “broker” means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.

(5) The term “dealer” means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individual or in some fiduciary capacity, but not as a part of a regular business.

(6) The term “bank” means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

* * * * *

(8) The term “issuer” means any person

* The act is not reproduced here in its entirety. A line of asterisks notes where material has been omitted.

who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) The term "person" means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

(10) The term "security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(11) The term "equity security" means any stock or similar security; or any security

convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(12) (A) The term "exempted security" or "exempted securities" includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

(iii) any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;

(iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph;

(v) any security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;

(vi) solely for purposes of sections 12, 13, 14, and 16 of this title, any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

(vii) such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commis-

sion may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities".

(B) (i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be "exempted securities" for the purposes of section 17A of this title.

(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be "exempted securities" for the purposes of sections 15 and 17A of this title.

(C) For purposes of subparagraph (A)(iv) of this paragraph, the term "qualified plan" means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of such Code, or (II) is a plan funded by an annuity contract described in section 403(b) of such Code.

(13) The terms "buy" and "purchase" each include any contract to buy, purchase, or otherwise acquire.

(14) The term "sale" and "sell" each include any contract to sell or otherwise dispose of.

* * * * *

(16) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

* * * * *

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of this title (other than paragraph (6) thereof).

(19) The terms "investment company", "affiliated "person", "insurance company", "separate account", and "company" have the same meanings as in the Investment Company Act of 1940.

* * * * *

(21) The term "person associated with a member" or "associated person of a member" when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

* * * * *

(23) (A) The term "clearing agency" means

any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appro-

priate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this title; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph 25(E) of this subsection.

* * * * *

(26) The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 19(b), 19(c), and 23(b) of this title) the Municipal Securities Rulemaking Board established by section 15B of this title.

(27) The term "rules of an exchange", "rules of an association", or "rules of a clearing agency" means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term "rules of a self-regulatory organization" means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing

agency, or the rules of the Municipal Securities Rulemaking Board.

(29) The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in Section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

* * * * *

(35) A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) make decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder.

* * * * *

(41) The term "mortgage related security" means a security that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization, and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (includ-

ing any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located or on one or more parcels of real estate upon which is located one or more commercial structures; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to section 2 of the National Housing Act; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A)(i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term

“promissory note”, when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument.

(42) The term “government securities” means—

(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

(B) securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission; or

(D) for purposes of sections 15C and 17A, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association.

* * * * *

(50) The term “foreign securities authority” means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

* * * * *

(b) *Power to define technical, trade, accounting, and other terms.* The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, account-

ing, and other terms used in this title, consistently with the provisions and purposes of this title.

* * * * *

[15 USC 78c. Amended by acts of Aug. 23, 1935 (49 Stat. 704); Aug. 20, 1964 (78 Stat. 565); Dec. 14, 1970 (84 Stat. 1435); Dec. 22, 1970 (84 Stat. 1499); June 4, 1975 (89 Stat. 97); May 21, 1978 (92 Stat. 274); Oct. 13, 1982 (96 Stat. 1409); Aug. 10, 1984 (98 Stat. 1265); Oct. 3, 1984 (98 Stat. 1689); Oct. 28, 1986 (100 Stat. 3214–3216); Dec. 4, 1987 (101 Stat. 1253, 1254); Nov. 19, 1988 (102 Stat. 4681); Aug. 9, 1989 (103 Stat. 441); Oct. 15, 1990 (104 Stat. 952); Nov. 15, 1990 (104 Stat. 2717, 2718); Dec. 17, 1993 (107 Stat. 2350, 2352); Sept. 23, 1994 (108 Stat. 2198, 2241); Dec. 8, 1995 (109 Stat. 684); and Oct. 11, 1996 (110 Stat. 3424, 3447). Acts of June 25, 1959 (73 Stat. 142) and July 12, 1960 (74 Stat. 412) deleted the words “Alaska” and “Hawaii,” respectively, from paragraph (16). The words “Philippine Islands” were deleted from the definition of “State” in paragraph (16) under authority of Proc. No. 2695, effective July 4, 1946, which recognized the independence of the Philippine Islands. The proclamation is set out as a note under 22 USC 1394.]

* * * * *

SECTION 6—National Securities Exchanges (15 USC 78f)

(a) *Registration; application.* An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 19(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

* * * * *

[15 USC 78f. This section became effective Sept. 1, 1934. As amended by acts of June 4, 1975 (89 Stat. 104); Dec. 4, 1987 (101 Stat. 1255, 1256); and Dec. 17, 1993 (107 Stat. 2365).]

SECTION 7—Margin Requirements (15 USC 78g)

(a) *Rules and regulations for extension of credit; standard for initial extension; undermargined accounts.* For the purpose of preventing the excessive use of credit for the

purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall, prior to the effective date of this section and from time to time thereafter, prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security). For the initial extension of credit, such rules and regulations shall be based upon the following standard: An amount not greater than whichever is the higher of—

- (1) 55 per centum of the current market price of the security, or
- (2) 100 per centum of the lowest market price of the security during the preceding thirty-six calendar months, but not more than 75 per centum of the current market price.

Such rules and regulations may make appropriate provision with respect to the carrying of undermargined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the substitution or additional purchases of securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales, arbitrage transactions, and securities to which paragraph (2) of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details. For the purposes of paragraph (2) of this subsection, until July 1, 1936, the lowest price at which a security has sold on or after July 1, 1933, shall be considered as the lowest price at which such security has sold during the preceding thirty-six calendar months.

(b) *Lower and higher margin requirements.* Notwithstanding the provisions of subsection (a) of this section, the Board of Governors of the Federal Reserve System, may, from time to time, with respect to all or specified securities or transactions, or classes of securities, or classes of transactions, by such rules and regulations (1) prescribe such lower margin requirements for the initial extension or maintenance of credit as it deems necessary or appropriate for the accommodation of commerce and industry, having due regard to the

general credit situation of the country, and (2) prescribe such higher margin requirements for the initial extension or maintenance of credit as it may deem necessary or appropriate to prevent the excessive use of credit to finance transactions in securities.

(c) *Unlawful credit extension to customers.*

(1) It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

(A) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall prescribe under subsections (a) and (b); and

(B) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board may prescribe—

(i) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board; and

(ii) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of subparagraph (A).

(2) This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged by a member of a national securities exchange or a broker or dealer to or for a member of a national securities exchange or a registered broker or dealer—

(A) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

(B) to finance its activities as a market maker or an underwriter;

except that the Board may impose such

rules and regulations, in whole or in part, on any credit otherwise exempted by this paragraph if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

(d) *Unlawful credit extension in violation of rules and regulations; exception to application of rules, etc.*

(1) It shall be unlawful for any person not subject to subsection (c) to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) and the rules and regulations thereunder.

(2) This subsection and the rules and regulations issued under this subsection shall not apply to any credit extended, maintained, or arranged—

(A) by a person not in the ordinary course of business;

(B) on an exempted security;

(C) to or for a member of a national securities exchange or a registered broker or dealer—

(i) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

(ii) to finance its activities as a market maker or an underwriter;

(D) by a bank on a security other than an equity security; or

(E) as the Board shall, by such rules, regulations, or orders as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder.

(3) The Board may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by subparagraph (C) if it determines that such action is necessary or appropriate in the public interest or for the protection of investors.

(e) *Effective date of this section and rules and regulations.* The provisions of this section or the rules and regulations thereunder shall not apply on or before July 1, 1937, to any loan or extension of credit made prior to the enactment of this title or to the maintenance, renewal, or extension of any such loan or credit, except to the extent that the Board of Governors of the Federal Reserve System may by rules and regulations prescribe as necessary to prevent the circumvention of the provisions of this section or the rules and regulations thereunder by means of withdrawals of funds or securities, substitutions of securities, or additional purchases or by any other device.

(f) *Unlawful receipt of credit; exemptions.*

(1) It is unlawful for any United States person, or any foreign person controlled by a United States person or acting on behalf of or in conjunction with such person, to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit from any lender (without regard to whether the lender's office or place of business is in a State or the transaction occurred in whole or in part within a State) for the purpose of (A) purchasing or carrying United States securities, or (B) purchasing or carrying within the United States of any other securities, if, under this section or rules and regulations prescribed thereunder, the loan or other credit transaction is prohibited or would be prohibited if it had been made or the transaction had otherwise occurred in a lender's office or other place of business in a State.

(2) For the purposes of this subsection—

(A) The term "United States person" includes a person which is organized or exists under the laws of any State or, in the case of natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in ex-

cess of 50 per centum of the value of the trust.

(B) The term "United States security" means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

(C) The term "foreign person controlled by a United States person" includes any noncorporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock.

(3) The Board of Governors of the Federal Reserve System may, in its discretion and with due regard for the purposes of this section, by rule or regulation exempt any class of United States persons or foreign persons controlled by a United States person from the application of this subsection.

(g) Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no member of a national securities exchange or broker or dealer shall be deemed to have extended or maintained credit or arranged for the extension or maintenance of credit for the purpose of purchasing a security, within the meaning of this section, by reason of a bona fide agreement for delayed delivery of a mortgage related security or a small business related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.

[15 USC 78g. As amended by acts of July 29, 1968 (82 Stat. 452); Oct. 26, 1970 (84 Stat. 1124); Oct. 3, 1984 (98 Stat. 1690); Sept. 23, 1994 (108 Stat. 2199); and Oct. 11, 1996 (110 Stat. 3422, 3423).]

SECTION 8—Restrictions on Borrowing by Members, Brokers, and Dealers (15 USC 78h)

It shall be unlawful for any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange, directly or indirectly—

(a) In contravention of such rules and regulations as the Commission shall prescribe for the protection of investors to hypothecate or arrange for the hypothecation of any securities carried for the account of any customer under circumstances (1) that will permit the commingling of his securities without his written consent with the securities of any other customer, (2) that will permit such securities to be commingled with the securities of any person other than a bona fide customer, or (3) that will permit such securities to be hypothecated, or subjected to any lien or claim of the pledgee, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities.

* * * * *

[15 USC 78h. As amended by acts of June 4, 1975 (89 Stat. 109); Oct. 3, 1984 (98 Stat. 1690); Sept. 23, 1994 (108 Stat. 2199); and Oct. 11, 1996 (110 Stat. 3423).]

* * * * *

SECTION 17—Records and Reports (15 USC 78q)

* * * * *

(g) *Persons extending credit.* Any broker, dealer, or other person extending credit who is subject to the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to this title shall make such reports of the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this title. If any such broker, dealer, or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, or other person shall permit such inspections to be made by

the Board with respect to the business operations of such broker, dealer, or other person as the Board may deem necessary to enable it to obtain the required information.

* * * * *

[15 USC 78q. As amended by acts of Aug. 23, 1935 (49 Stat. 704); May 27, 1936 (49 Stat. 1379); June 25, 1938 (52 Stat. 1076); June 4, 1975 (89 Stat. 137); Oct. 28, 1986 (100 Stat. 3219); Dec. 4, 1987 (101 Stat. 1257); Oct. 16, 1990 (104 Stat. 966); and Oct. 11, 1996 (110 Stat. 3425).]

* * * * *

SECTION 23—Rules, Regulations, and Orders; Annual Reports (15 USC 78w)

(a) *Power to make rules and regulations; considerations; public disclosure.*

(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 3(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which they are responsible or for the execution of the functions vested in them by this title, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof. No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order of the Commission, the Board of Governors of the Federal Reserve System, other agency enumerated in section 3(a)(34) of this title, or any self-regulatory organization, notwithstanding that such rule, regulation, or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

* * * * *

[15 USC 78w. As amended by acts of Aug. 23, 1935 (49 Stat. 704); May 27, 1936 (49 Stat. 1379); Aug. 20, 1964 (78 Stat. 580); June 4, 1975 (89 Stat. 155); Oct. 28, 1986 (100 Stat. 3220); Dec. 4, 1987 (101 Stat. 1259); Oct. 15, 1990 (104 Stat. 940); and Dec. 17, 1993 (107 Stat. 2351).]

* * * * *

SECTION 29—Validity of Contracts (15 USC 78cc)

* * * * *

(b) *Contract provisions in violation of title.*

Every contract made in violation of any provision of this title or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule or regulation: *Provided*, (A) That no contract shall be void by reason of this subsection because of any violation of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 15 of this title, and (B) that no contract shall be deemed to be void by reason of this subsection in any action maintained in reliance upon this subsection, by any person to or for whom any broker or dealer sells, or from or for whom any broker or dealer purchases, a security in violation of any rule or regulation prescribed pursuant to paragraph (1) or (2) of subsection (c) of section 15 of this title, unless such action is brought within one year after the discovery that such sale or purchase involves such violation and within three years after such violation. The Commission may, in a rule or regulation prescribed pursuant to such paragraph (2) of such section 15(c), designate such rule or regulation, or portion thereof, as a rule or regulation, or portion thereof, a contract in violation of which shall not be void by reason of this subsection.

* * * * *

[15 USC 78cc. As amended by acts of June 25, 1938 (52 Stat. 1076) and Oct. 15, 1990 (104 Stat. 956).]

Regulation J
Collection of Checks
and Other Items
by Federal Reserve Banks
and Funds Transfers
Through Fedwire

12 CFR 210; as amended effective January 2, 1998



Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

January 1998

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Regulation J

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire

12 CFR 210*; as amended effective January 2, 1998

SUBPART A—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS

SECTION 210.1—Authority, Purpose, and Scope

The Board of Governors of the Federal Reserve System (Board) has issued this subpart pursuant to the Federal Reserve Act, section 11(i) and (j) (12 USC 248(i) and (j)), section 13 (12 USC 342), section 16 (12 USC 248(o) and 360), and section 19(f) (12 USC 464); the Expedited Funds Availability Act (12 USC 4001 et seq.); and other laws. This subpart governs the collection of checks and other cash and noncash items and the handling of returned checks by Federal Reserve Banks. Its purpose is to provide rules for collecting and returning items and settling balances.

SECTION 210.2—Definitions

As used in this subpart, unless the context otherwise requires—

(a) *Account* means an account with reserve or clearing balances on the books of a Federal Reserve Bank. A subaccount is an informational record of a subset of transactions that affect an account and is not a separate account.

(b) *Actually and finally collected funds* means cash or any other form of payment that is, or has become, final and irrevocable.

(c) *Administrative Reserve Bank* with respect to an entity means the Reserve Bank in whose District the entity is located, as determined under the procedure described in section 204.3(b)(2) of this chapter (Regulation D), even if the entity is not otherwise subject to that section.

(d) *Bank* means any person engaged in the business of banking. A branch or separate office of a bank is a separate bank to the extent provided in the Uniform Commercial Code.

(e) *Bank draft* means a check drawn by one bank on another bank.

(f) *Banking day* means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(g) *Cash item* means—

(1) a check other than one classified as a noncash item under this section; or

(2) any other item payable on demand and collectible at par that the Reserve Bank that receives the item is willing to accept as a cash item. "Cash item" does not include a returned check.

(h) *Check* means a draft, as defined in the Uniform Commercial Code, that is drawn on a bank and payable on demand. "Check as defined in 12 CFR 229.2(k)" means an item defined as a check in 12 CFR 229.2(k) for purposes of subpart C of part 229.

(i) *Item* means an instrument or a promise or order to pay money, whether negotiable or not, that is—

(1) payable in a Federal Reserve District¹ ("District");

(2) sent by a sender to a Reserve Bank for handling under this subpart; and

(3) collectible in funds acceptable to the Reserve Bank of the District in which the instrument is payable.

Unless otherwise indicated, "item" includes both a cash and a noncash item, and includes a returned check sent by a paying or returning bank. "Item" does not include a check that cannot be collected at par, or a "payment

¹ For purposes of this subpart, the Virgin Islands and Puerto Rico are deemed to be in the Second District, and Guam, American Samoa, and the Northern Mariana Islands in the Twelfth District.

* Code of Federal Regulations, title 12, chapter II, part 210.

order” as defined in section 210.26(i) and handled under subpart B of this part.

(j) *Nonbank payor* means a payor of an item, other than a bank.

(k) *Noncash item* means an item that a receiving Reserve Bank classifies in its operating circulars as requiring special handling. The term also means an item normally received as a cash item if a Reserve Bank decides that special conditions require that it handle the item as a noncash item.

(l) *Paying bank* means—

(1) the bank by which an item is payable, unless the item is payable or collectible at or through another bank and is sent to the other bank for payment or collection;

(2) the bank at or through which an item is payable or collectible and to which it is sent for payment or collection; or

(3) The bank whose routing number appears on a check in magnetic characters or fractional form and to which the check is sent for payment or collection.

(m) *Returned check* means a cash item or a check as defined in 12 CFR 229.2(k) returned by a paying bank, including a notice of nonpayment in lieu of a returned check, whether or not a Reserve Bank handled the check for collection.

(n) *Sender* means any of the following that sends an item to a Reserve Bank for forward collection: a depository institution, a clearing institution, another Reserve Bank, an international organization, a foreign correspondent, or a branch or agency of a foreign bank maintaining reserves under section 7 of the International Banking Act of 1978 (12 USC 347d, 3105).

(1) *Depository institution* means a depository institution as defined in section 19(b) of the Federal Reserve Act (12 USC 461(b)).

(2) *Clearing institution* means—

(i) an institution that is not a depository institution, but maintains with a Reserve Bank the balance referred to in the first paragraph of section 13 of the Federal Reserve Act (12 USC 342); or

(ii) a corporation that maintains an ac-

count with a Reserve Bank in conformity with section 211.4 of this chapter (Regulation K).

(3) *International organization* means an international organization for which a Reserve Bank is empowered to act as depository or fiscal agent and maintains an account.

(4) *Foreign correspondent* means any of the following for which a Reserve Bank maintains an account: a foreign bank or banker, a foreign state as defined in section 25(b) of the Federal Reserve Act (12 USC 632), or a foreign correspondent or agency referred to in section 14(e) of that act (12 USC 358).

(o) *State* means a state of the United States, the District of Columbia, Puerto Rico, or a territory, possession, or dependency of the United States.

(p) *Clock hour* means a time that is on the hour, such as 1:00, 2:00, etc.

(q) *Fedwire* has the same meaning as that set forth in section 210.26(e) of this part.

(r) *Uniform Commercial Code* means the Uniform Commercial Code as adopted in a state.

Unless the context otherwise requires, the terms not defined herein have the meanings set forth in 12 CFR 229.2 applicable to subpart C of part 229, and the terms not defined herein or in 12 CFR 229.2 have the meanings set forth in the Uniform Commercial Code.

SECTION 210.3—General Provisions

(a) *General.* Each Reserve Bank shall receive and handle items in accordance with this subpart, and shall issue operating circulars governing the details of its handling of items and other matters deemed appropriate by the Reserve Bank. The circulars may, among other things, classify cash items and noncash items, require separate sorts and letters, provide different closing times for the receipt of different classes or types of items, provide for instructions by an administrative Reserve Bank to other Reserve Banks, set forth terms of services, and establish procedures for adjustments on a Reserve Bank's books, including

amounts, waiver of expenses, and payment of interest by as-of adjustment.

(b) *Binding effect.* This subpart, together with subpart C of part 229 and the operating circulars of the Reserve Banks, are binding on all parties interested in an item handled by any Reserve Bank.

(c) *Government items.* As depositaries and fiscal agents of the United States, Reserve Banks handle certain items payable by the United States or certain federal agencies as cash or noncash items. To the extent provided by regulations issued by, and arrangements made with, the United States Treasury Department and other government departments and agencies, the handling of such items is governed by this subpart. The Reserve Banks shall include in their operating circulars such information regarding these regulations and arrangements as the Reserve Banks deem appropriate.

(d) *Government senders.* Except as otherwise provided by statutes of the United States, or regulations issued or arrangements made thereunder, this subpart and the operating circulars of the Reserve Banks apply to the following when acting as a sender: a department, agency, instrumentality, independent establishment, or office of the United States, or a wholly owned or controlled government corporation, that maintains or uses an account with a Reserve Bank.

(e) *Foreign items.* A Reserve Bank also may receive and handle certain items payable outside a Federal Reserve District, as provided in its operating circulars. The handling of such items in a state is governed by this subpart, and the handling of such items outside a state is governed by the local law.

(f) *Relation to other law.* The provisions of this subpart supersede any inconsistent provisions of the Uniform Commercial Code, of any other state law, or of part 229 of this title, but only to the extent of the inconsistency.

SECTION 210.4—Sending Items to Reserve Banks

(a) *Sending of items.* A sender, other than a

Reserve Bank, may send any item to any Reserve Bank, whether or not the item is payable within the Reserve Bank's District, unless the sender's administrative Reserve Bank directs the sender to send the item to a specific Reserve Bank.

(b) *Handling of items.*

(1) The following parties, in the following order, are deemed to have handled an item that is sent to a Reserve Bank for collection:

- (i) the initial sender;
- (ii) the initial sender's administrative Reserve Bank;
- (iii) the Reserve Bank that receives the item from the initial sender (if different from the initial sender's administrative Reserve Bank); and
- (iv) another Reserve Bank, if any, that receives the item from a Reserve Bank.

(2) A Reserve Bank that is not described in paragraph (b)(1) of this section is not a party that handles an item and is not a collecting bank with respect to an item.

(3) The identity and order of the parties under paragraph (b)(1) of this section determine the relationships and the rights and liabilities of the parties under this subpart, part 229 of this chapter (Regulation CC), and the Uniform Commercial Code. An initial sender's administrative Reserve Bank that is deemed to handle an item is also deemed to be a sender with respect to that item. The Reserve Banks that are deemed to handle an item are deemed to be agents or subagents of the owner of the item, as provided in section 210.6(a) of this subpart.

(c) *Checks received at par.* The Reserve Banks shall receive cash items and other checks at par.

SECTION 210.5—Sender's Agreement; Recovery by Reserve Bank

(a) *Sender's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the item bears an indorsement of the sender. By sending an item to a Reserve Bank, the sender—

(1) authorizes the sender's administrative Reserve Bank and any other Reserve Bank or collecting bank to which the item is sent to handle the item (and authorizes any Reserve Bank that handles settlement for the item to make accounting entries), subject to this subpart and to the Reserve Banks' operating circulars, and warrants its authority to give this authorization;

(2) warrants to each Reserve Bank handling the item that—

(i) the sender is a person entitled to enforce the item or authorized to obtain payment of the item on behalf of a person entitled to enforce the item; and

(ii) the item has not been altered; but this paragraph (a)(2) does not limit any warranty by a sender or other prior party arising under state law or under subpart C of part 229 of this title; and

(3) agrees to indemnify each Reserve Bank for any loss or expense sustained (including attorneys' fees and expenses of litigation) resulting from—

(i) the sender's lack of authority to make the warranty in paragraph (a)(1) of this section;

(ii) any action taken by the Reserve Bank within the scope of its authority in handling the item; or

(iii) any warranty made by the Reserve Bank under section 210.6(b) of this subpart.

(b) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled an item, based on—

(1) the alleged failure of the sender to have the authority to make the warranty and agreement in subparagraph (a)(1) of this section;

(2) any action by the Reserve Bank within the scope of its authority in handling the item; or

(3) any warranty made by the Reserve Bank under section 210.6(b) of this subpart, the Reserve Bank may, upon entry of a final judgment or decree, recover from the sender the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay

because of the judgment or decree or the tender of defense, together with interest thereon.

(c) *Methods of recovery.*

(1) The Reserve Bank may recover the amount stated in paragraph (b) of this section by charging any account on its books that is maintained or used by the sender (or by charging a Reserve Bank sender), if—

(i) the Reserve Bank made reasonable written demand on the sender to assume defense of the action or proceeding; and

(ii) the sender has not made any other arrangement for payment that is acceptable to the Reserve Bank.

(2) The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged under this paragraph (c) may recover from its sender in the manner and under the circumstances set forth in this paragraph (c). A Reserve Bank's failure to avail itself of the remedy provided in this paragraph (c) does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (a)(3) of this section.

(d) *Security interest.* When a sender sends an item to a Reserve Bank, the sender and any prior collecting bank grant to the sender's administrative Reserve Bank a security interest in all of their respective assets in the possession of, or held for the account of, any Reserve Bank to secure their respective obligations due or to become due to the administrative Reserve Bank under this subpart or subpart C of part 229 of this chapter (Regulation CC). The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender or prior collecting bank, or if the sender or prior collecting bank suspends payments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

SECTION 210.6—Status, Warranties, and Liability of Reserve Bank

(a) (1) *Status and liability.* A Reserve Bank that handles an item shall act as agent or subagent of the owner with respect to the item. This agency terminates when a Reserve Bank receives final payment for the item in actually and finally collected funds, a Reserve Bank makes the proceeds available for use by the sender, and the time for commencing all actions against the Reserve Bank has expired. A Reserve Bank shall not have or assume any liability with respect to an item or its proceeds except—

(i) for the Reserve Bank's own lack of good faith or failure to exercise ordinary care;

(ii) as provided in paragraph (b) of this section; and

(iii) as provided in subpart C of part 229 of this chapter (Regulation CC).

(2) *Reliance on routing designation appearing on item.* A Reserve Bank may present or send an item based on the routing number or other designation of a paying bank or nonbank payor appearing in any form on the item when the Reserve Bank receives it. A Reserve Bank shall not be responsible for any delay resulting from its acting on any designation, whether inscribed by magnetic ink or by other means, and whether or not the designation acted on is consistent with any other designation appearing on the item.

(b) *Warranties and liability.*

(1) By presenting or sending an item, a Reserve Bank warrants to a subsequent collecting bank and to the paying bank and any other payor—

(i) that the Reserve Bank is a person entitled to enforce the item (or is authorized to obtain payment of the item on behalf of a person who is either entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item); and

(ii) that the item has not been altered.

(2) The Reserve Bank also makes the warranties set forth in section 229.34(c) of this title, subject to the terms of part 229 of this chapter (Regulation CC). The Reserve Bank shall not have or assume any other liability

to the paying bank or other payor, except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(c) *Time for commencing action against Reserve Bank.* A claim against a Reserve Bank for lack of good faith or failure to exercise ordinary care shall be barred unless the action on the claim is commenced within two years after the claim accrues. A claim accrues on the date when a Reserve Bank's alleged failure to exercise ordinary care or to act in good faith first results in damages to the claimant. This paragraph does not lengthen the time limit for claims under section 229.38(g) of this title (which include claims for breach of warranty under section 229.34 of this title).

SECTION 210.7—Presenting Items for Payment

(a) *Presenting or sending.* As provided under state law or as otherwise permitted by this section—

(1) a Reserve Bank or a subsequent collecting bank may present an item for payment or send the item for presentment and payment; and

(2) a Reserve Bank may send an item to a subsequent collecting bank with authority to present it for payment or to send it for presentment and payment.

(b) *Place of presentment.* A Reserve Bank or subsequent collecting bank may present an item—

(1) at a place requested by the paying bank;

(2) in the case of a check as defined in 12 CFR 229.2(k), in accordance with 12 CFR 229.36;

(3) at a place requested by the nonbank payor, if the item is payable by a nonbank payor other than through or at a paying bank;

(4) under a special collection agreement consistent with this subpart; or

(5) through a clearinghouse and subject to its rules and practices.

(c) *Presenting or sending direct.* A Reserve Bank or subsequent collecting bank may, with respect to an item that may be sent to the

paying bank or nonbank payor in the Reserve Bank's District—

(1) present or send the item direct to the paying bank, or to a place requested by the paying bank; or

(2) if the item is payable by a nonbank payor other than through a paying bank, present it direct to the nonbank payor. Documents, securities, or other papers accompanying a noncash item shall not be delivered to the nonbank payor before the item is paid unless the sender specifically authorizes delivery.

(d) *Item sent to another District.* A Reserve Bank receiving an item that may be sent to a paying bank or nonbank payor in another District ordinarily sends the item to the Reserve Bank of the other District, but with the agreement of the other Reserve Bank, may present or send the item as if it were sent to a paying bank or nonbank payor in its own District.

SECTION 210.8—Presenting Noncash Items for Acceptance

(a) A Reserve Bank or a subsequent collecting bank may, if instructed by the sender, present a noncash item for acceptance in any manner authorized by law if—

(1) the item provides that it must be presented for acceptance;

(2) the item is presented elsewhere than at the residence or place of business of the payor; or

(3) the date of payment of the item depends on presentment for acceptance.

(b) Documents accompanying a noncash item shall not be delivered to the payor upon acceptance of the item unless the sender specifically authorizes delivery. A Reserve Bank shall not have or assume any other obligation to present or to send for presentment for acceptance any noncash item.

SECTION 210.9—Settlement and Payment

(a) *Settlement through administrative Reserve Bank.* A paying bank shall settle for an item under this subpart with its administrative Re-

serve Bank, whether or not the paying bank received the item from that Reserve Bank. A paying bank's settlement with its administrative Reserve Bank is deemed to be settlement with the Reserve Bank from which the paying bank received the item. A paying bank may settle for an item using any account on a Reserve Bank's books by agreement with its administrative Reserve Bank, any other Reserve Bank holding the settlement account, and the account holder. The paying bank remains responsible for settlement if the Reserve Bank holding the settlement account does not, for any reason, obtain settlement in that account.

(b) *Cash items.*

(1) *Settlement obligation.* On the day a paying bank receives² a cash item from a Reserve Bank, it shall settle for the item such that the proceeds of the settlement are available to its administrative Reserve Bank by the close of Fedwire on that day, or it shall return the item by the later of the close of its banking day or the close of Fedwire. If the paying bank fails to settle for or return a cash item in accordance with this paragraph (b)(1), it is accountable for the amount of the item as of the close of its banking day or the close of Fedwire on the day it receives the item, whichever is earlier.

(2) *Time of settlement.*

(i) On the day a paying bank receives a cash item from a Reserve Bank, it shall settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank, or return the item, by the latest of—

(A) the next clock hour that is at least one hour after the paying bank receives the item;

(B) 9:30 a.m. eastern time; or

(C) such later time as provided in the Reserve Banks' operating circulars.

(ii) If the paying bank fails to settle for or return a cash item in accordance with paragraph (b)(2)(i) of this section, it shall

² A paying bank is deemed to receive a cash item on its next banking day if it receives the item (1) on a day other than a banking day for it; or (2) on a banking day for it, but after a "cutoff hour" established by it in accordance with state law.

be subject to any applicable overdraft charges. Settlement under paragraph (b)(2)(i) of this section satisfies the settlement requirements of paragraph (b)(1) of this section.

(3) *Paying bank closes voluntarily.*

(i) If a paying bank closes voluntarily so that it does not receive a cash item on a day that is a banking day for a Reserve Bank, and the Reserve Bank makes a cash item available to the paying bank on that day, the paying bank shall either—

(A) on that day, settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank, or return the item, by the latest of the next clock hour that is at least one hour after it ordinarily would have received the item, 9:30 a.m. eastern time, or such later time as provided in the Reserve Banks' operating circulars; or

(B) on the next day that is a banking day for both the paying bank and the Reserve Bank, settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank by 9:30 a.m. eastern time on that day or such later time as provided in the Reserve Banks' operating circulars; and compensate the Reserve Bank for the value of the float associated with the item in accordance with procedures provided in the Reserve Bank's operating circular.

(ii) If a paying bank closes voluntarily so that it does not receive a cash item on a day that is a banking day for a Reserve Bank, and the Reserve Bank makes a cash item available to the paying bank on that day, the paying bank is not considered to have received the item until its next banking day, but it shall be subject to any applicable overdraft charges if it fails to settle for or return the item in accordance with paragraph (b)(3)(i) of this section. The settlement requirements of paragraphs (b)(1) and (b)(2) of this section do not apply to a paying bank that settles in accordance with paragraph (b)(3)(i) of this section.

(4) *Reserve Bank closed.*

(i) If a paying bank receives a cash item from a Reserve Bank on a banking day that is not a banking day for the Reserve Bank, the paying bank shall—

(A) settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank by the close of Fedwire on the Reserve Bank's next banking day, or return the item by midnight of the day it receives the item (if the paying bank fails to settle for or return a cash item in accordance with this paragraph (b)(4)(i)(A), it shall become accountable for the amount of the item as of the close of its banking day on the day it receives the item); and

(B) settle for the item so that the proceeds of the settlement are available to its administrative Reserve Bank by 9:30 a.m. eastern time on the Reserve Bank's next banking day or such later time as provided in the Reserve Bank's operating circular, or return the item by midnight of the day it receives the item. If the paying bank fails to settle for or return a cash item in accordance with this paragraph (b)(4)(i)(B), it shall be subject to any applicable overdraft charges. Settlement under this paragraph (b)(4)(i)(B) satisfies the settlement requirements of paragraph (b)(4)(i)(A) of this section.

(ii) The settlement requirements of paragraphs (b)(1) and (b)(2) of this section do not apply to a paying bank that settles in accordance with paragraph (b)(4)(i) of this section.

(5) *Manner of settlement.* Settlement with a Reserve Bank under paragraphs (b)(1) through (4) of this section shall be made by debit to an account on the Reserve Bank's books, cash, or other form of settlement to which the Reserve Bank agrees, except that the Reserve Bank may, in its discretion, obtain settlement by charging the paying bank's account. A paying bank may not set off against the amount of a settlement under this section the amount of a claim with respect to another cash item, cash letter, or other claim under section 229.34(c) of this chapter (Regulation CC) or other law.

(6) *Notice in lieu of return.* If a cash item is unavailable for return, the paying bank may send a notice in lieu of return as provided in section 229.30(f) of this chapter (Regulation CC).

(c) *Noncash items.* A Reserve Bank may require the paying or collecting bank to which it has presented or sent a noncash item to pay for the item in cash, but the Reserve Bank may permit payment by a debit to an account maintained or used by the paying or collecting bank on the Reserve Bank's books or by any of the following that is in a form acceptable to the Reserve Bank: bank draft, transfer of funds or bank credit, or any other form of payment authorized by state law.

(d) *Nonbank payor.* A Reserve Bank may require a nonbank payor to which it has presented an item to pay for it in cash, but the Reserve Bank may permit payment in any of the following that is in a form acceptable to the Reserve Bank: cashier's check, certified check, or other bank draft or obligation.

(e) *Handling of payment.* A Reserve Bank may handle a bank draft or other form of payment it receives in payment of a cash item as a cash item. A Reserve Bank may handle a bank draft or other form of payment it receives in payment of a noncash item as either a cash item or a noncash item.

(f) *Liability of Reserve Bank.* Except as set forth in 12 CFR 229.35(b), a Reserve Bank shall not be liable for the failure of a collecting bank, paying bank, or nonbank payor to pay for an item, or for any loss resulting from the Reserve Bank's acceptance of any form of payment other than cash authorized in paragraphs (b), (c), and (d) of this section. A Reserve Bank that acts in good faith and exercises ordinary care shall not be liable for the nonpayment of, or failure to realize upon, a bank draft or other form of payment that it accepts under paragraphs (b), (c), and (d).

SECTION 210.10—Time Schedule and Availability of Credits for Cash Items and Returned Checks

(a) Each Reserve Bank shall include in its operating circulars a time schedule for each of

its offices indicating when the amount of any cash item or returned check received by it is counted as reserves for purposes of part 204 of this chapter (Regulation D) and becomes available for use by the sender or paying or returning bank. The Reserve Bank that holds the settlement account shall give either immediate or deferred credit to a sender, a paying bank, or a returning bank (other than a foreign correspondent) in accordance with the time schedule of the receiving Reserve Bank. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment of the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

(b) Notwithstanding its time schedule, a Reserve Bank may refuse at any time to permit the use of credit given by it for any cash item or returned check, and may defer availability after credit is received by the Reserve Bank for a period of time that is reasonable under the circumstances.

SECTION 210.11—Availability of Proceeds of Noncash Items; Time Schedule

(a) *Availability of credit.* A Reserve Bank shall give credit to the sender for the proceeds of a noncash item when it receives payment in actually and finally collected funds (or advice from another Reserve Bank of such payment to it). The amount of the item is counted as reserve for purposes of part 204 of this chapter (Regulation D) and becomes available for use by the sender when the Reserve Bank receives the payment or advice, except as provided in paragraph (b) of this section.

(b) *Time schedule.* A Reserve Bank may give credit for the proceeds of a noncash item subject to payment in actually and finally collected funds in accordance with a time schedule included in its operating circulars. The time schedule shall indicate when the proceeds of the noncash item will be counted as reserve for purposes of part 204 of this chapter (Regulation D) and become available for use by the sender. A Reserve Bank may, how-

ever, refuse at any time to permit the use of credit given by it for a noncash item for which the Reserve Bank has not yet received payment in actually and finally collected funds.

(c) *Handling of payment.* If a Reserve Bank receives, in payment for a noncash item, a bank draft or other form of payment that it elects to handle as a noncash item, the Reserve Bank shall neither count the proceeds as reserve for purposes of part 204 of this chapter (Regulation D) nor make the proceeds available for use until it receives payment in actually and finally collected funds.

SECTION 210.12—Return of Cash Items and Handling of Returned Checks

(a) *Return of items.*

(1) *Return of cash items handled by Reserve Banks.* A paying bank that receives a cash item from a Reserve Bank, other than for immediate payment over the counter, and that settles for the item as provided in section 210.9(b) of this subpart, may, before it has finally paid the item, return the item to any Reserve Bank (unless its administrative Reserve Bank directs it to return the item to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars. The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(2) *Return of checks not handled by Reserve Banks.* A paying bank that receives a check as defined in 12 CFR 229.2(k) of this chapter (Regulation CC), other than from a Reserve Bank, and that determines not to pay the check, may send the returned check to any Reserve Bank (unless its administrative Reserve Bank directs it to send the returned check to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars. A returning bank may

send a returned check to any Reserve Bank (unless its administrative Reserve Bank directs it to send the returned check to a specific Reserve Bank) in accordance with subpart C of part 229 of this chapter (Regulation CC), the Uniform Commercial Code, and the Reserve Banks' operating circulars.

(b) *Handling of returned checks.*

(1) The following parties, in the following order, are deemed to have handled a returned check sent to a Reserve Bank under paragraph (a) of this section:

- (i) the paying or returning bank;
- (ii) the paying bank's or returning bank's administrative Reserve Bank;
- (iii) the Reserve Bank that receives the returned check from the paying or returning bank (if different from the paying bank's or returning bank's administrative Reserve Bank); and
- (iv) another Reserve Bank, if any, that receives the returned check from a Reserve Bank.

(2) A Reserve Bank that is not described in paragraph (b)(1) of this section is not a party that handles a returned check and is not a returning bank with respect to a returned check.

(3) The identity and order of the parties under paragraph (b)(1) of this section determine the relationships and the rights and liabilities of the parties under this subpart, part 229 of this chapter (Regulation CC), and the Uniform Commercial Code.

(c) *Paying bank's and returning bank's agreement.* The warranties, authorizations, and agreements made pursuant to this paragraph may not be disclaimed and are made whether or not the returned check bears an indorsement of the paying bank or returning bank. By sending a returned check to a Reserve Bank, the paying bank or returning bank—

(1) authorizes the paying or returning bank's administrative Reserve Bank, and any other Reserve Bank or returning bank to which the returned check is sent, to handle the returned check (and authorizes any Reserve Bank that handles settlement for the returned check to make accounting entries) subject to this subpart and to the Reserve Banks' operating circulars;

(2) makes the warranties set forth in section 229.34 of this title (but this paragraph does not limit any warranty by a paying or returning bank arising under state law); and (3) agrees to indemnify each Reserve Bank for any loss or expense (including attorneys' fees and expenses of litigation) resulting from—

- (i) the paying or returning bank's lack of authority to give the authorization in paragraph (c)(1) of this section;
- (ii) any action taken by a Reserve Bank within the scope of its authority in handling the returned check; or
- (iii) any warranty made by the Reserve Bank under 12 CFR 229.34.

(d) *Warranties by Reserve Bank.* By handling a returned check under this subpart, a Reserve Bank makes the returning-bank warranties as set forth in section 229.34 of this chapter, subject to the terms of part 229 of this chapter (Regulation CC). The Reserve Bank shall not have or assume any other liability to the transferee returning bank, to any subsequent returning bank, to the depository bank, to the owner of the check, or to any other person, except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care as provided in subpart C of part 229 of this title.

(e) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled a returned check based on—

- (1) the alleged failure of the paying or returning bank to have the authority to give the authorization in paragraph (c)(1) of this section;
- (2) any action by the Reserve Bank within the scope of its authority in handling the returned check; or
- (3) any warranty made by the Reserve Bank under 12 CFR 229.34,

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the paying bank or returning bank the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay because of the judgment or decree or the tender of defense, together with interest thereon.

(f) *Methods of recovery.*

(1) The Reserve Bank may recover the amount stated in paragraph (d) of this section by charging any account on its books that is maintained or used by the paying or returning bank (or by charging another Reserve Bank) if—

- (i) the Reserve Bank made reasonable written demand on the paying or returning bank to assume defense of the action or proceeding; and
- (ii) the paying or returning bank has not made any other arrangement for payment that is acceptable to the Reserve Bank.

(2) The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged under this paragraph may recover from the paying or returning bank in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (c)(3) of this section.

(g) *Reserve Bank's responsibility.* A Reserve Bank shall handle a returned check, or a notice of nonpayment, in accordance with subpart C of part 229 and its operating circular.

(h) *Settlement.* A subsequent returning bank or depository bank shall settle with its administrative Reserve Bank for returned checks in the same manner and by the same time as for cash items presented for payment under this subpart. Settlement with its administrative Reserve Bank is deemed to be settlement with the Reserve Bank from which the returning bank or depository bank received the item.

(i) *Security interest.* When a paying or returning bank sends a returned check to a Reserve Bank, the paying bank, returning bank, and any prior returning bank grant to the paying bank's or returning bank's administrative Reserve Bank a security interest in all of their respective assets in the possession of, or held for the account of, any Reserve Bank, to secure their respective obligations due or to become due to the administrative Reserve Bank under this subpart or subpart C of part 229 of

this chapter (Regulation CC). The security interest attaches when a warranty is breached or any other obligation to the Reserve Bank is incurred. If the Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the paying bank, returning bank, or prior returning bank, or if the paying bank, returning bank, or prior returning bank suspends payments or is closed, the Reserve Bank may take any action authorized by law to recover the amount of an obligation, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

SECTION 210.13—Unpaid Items

(a) *Right of recovery.* If a Reserve Bank does not receive payment in actually and finally collected funds for an item, the Reserve Bank shall recover by charge-back or otherwise the amount of the item from the sender, prior collecting bank, paying bank, or returning bank from or through which it was received, whether or not the item itself can be sent back. In the event of recovery from such a party, no party, including the owner or holder of the item, shall, for the purpose of obtaining payment of the amount of the item, have any interest in any reserve balance or other funds or property in the Reserve Bank's possession of the bank that failed to make payment in actually and finally collected funds.

(b) *Suspension or closing of bank.* A Reserve Bank shall not pay or act on a draft, authorization to charge (including a charge authorized by section 210.9(a)(5)), or other order on a reserve balance or other funds in its possession for the purpose of settling for items under section 210.9 or section 210.12 after it receives notice of suspension or closing of the bank making the settlement for that bank's own or another's account.

SECTION 210.14—Extension of Time Limits

If a bank (including a Reserve Bank) or nonbank payor is delayed in acting on an item

beyond applicable time limits because of interruption of communication or computer facilities, suspension of payments by a bank or nonbank payor, war, emergency conditions, failure of equipment, or other circumstances beyond its control, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

SECTION 210.15—Direct Presentment of Certain Warrants

If a Reserve Bank elects to present direct to the payor a bill, note, or warrant that is issued and payable by a state or a political subdivision and that is a cash item not payable or collectible through a bank—

(a) sections 210.9, 210.12, and 210.13 and the operating circulars of the Reserve Banks apply to the payor as if it were a paying bank;

(b) section 210.14 applies to the payor as if it were a bank; and

(c) under section 210.9 each day on which the payor is open for the regular conduct of its affairs or the accommodation of the public is considered a banking day.

SUBPART B—FUNDS TRANSFERS THROUGH FEDWIRE

SECTION 210.25—Authority, Purpose, and Scope

(a) *Authority and purpose.* This subpart provides rules to govern funds transfers through Fedwire, and has been issued pursuant to the Federal Reserve Act—section 13 (12 USC 342), paragraph (f) of section 19 (12 USC 464), paragraph 14 of section 16 (12 USC 248(o)), and paragraphs (i) and (j) of section 11 (12 USC 248(i) and (j))—and other laws and has the force and effect of federal law. This subpart is not a funds-transfer system rule as defined in section 4A-501(b) of article 4A.*

* Section 4A-501(b) of article 4A of the Uniform Commercial Code.

(b) *Scope.*

(1) This subpart incorporates the provisions of article 4A set forth in appendix B to this subpart. In the event of an inconsistency between the provisions of the sections of this subpart and appendix B to this subpart, the provisions of the sections of this subpart shall prevail.

(2) Except as otherwise provided in paragraphs (3) and (4) of this section, this subpart governs the rights and obligations of—

(i) Federal Reserve Banks sending or receiving payment orders;

(ii) senders that send payment orders directly to a Federal Reserve Bank;

(iii) receiving banks that receive payment orders directly from a Federal Reserve Bank;

(iv) beneficiaries that receive payment for payment orders sent to a Federal Reserve Bank by means of credit to an account maintained or used at a Federal Reserve Bank; and

(v) other parties to a funds transfer any part of which is carried out through Fedwire to the same extent as if this subpart were considered a funds-transfer system rule under article 4A.

(3) This subpart governs a funds transfer that is sent through Fedwire, as provided in paragraph (b)(2) of this section, even though a portion of the funds transfer is governed by the Electronic Fund Transfer Act, but the portion of such funds transfer that is governed by the Electronic Fund Transfer Act is not governed by this subpart.

(4) In the event that any portion of this subpart establishes rights or obligations with respect to the availability of funds that are also governed by the Expedited Funds Availability Act or the Board's Regulation CC, Availability of Funds and Collection of Checks, those provisions of the Expedited Funds Availability Act or Regulation CC shall apply and the portion of this subpart, including article 4A as incorporated herein, shall not apply.

(c) *Operating circulars.* Each Federal Reserve Bank shall issue an operating circular consistent with this subpart that governs the details

of its funds-transfer operations and other matters it deems appropriate. Among other things, the operating circular may set cutoff hours and funds-transfer business days; address available security procedures; specify format and media requirements for payment orders; identify messages that are not payment orders; and impose charges for funds-transfer services.

(d) *Government senders, receiving banks, and beneficiaries.* Except as otherwise expressly provided by the statutes of the United States, the parties specified in paragraph (b)(2)(ii)–(v) of this section include—

(1) a department, agency, instrumentality, independent establishment, or office of the United States, or a wholly owned or controlled government corporation;

(2) an international organization;

(3) a foreign central bank; and

(4) a department, agency, instrumentality, independent establishment, or office of a foreign government, or a wholly owned or controlled corporation of a foreign government.

SECTION 210.26—Definitions

As used in this subpart, the following definitions apply:

(a) *Article 4A* means article 4A of the Uniform Commercial Code as set forth in appendix B of this subpart.

(b) *As-of adjustment* means a debit or credit, for reserve- or clearing-balance maintenance purposes only, applied to the reserve or clearing balance of a bank that either sends a payment order to a Federal Reserve Bank, or that receives a payment order from a Federal Reserve Bank, in lieu of an interest charge or payment.

(c) *Automated clearinghouse transfer* means any transfer designated as an automated clearinghouse transfer in a Federal Reserve Bank operating circular.

(d) *Beneficiary's bank* has the same meaning as in article 4A, except that—

(1) a Federal Reserve Bank need not be

identified in the payment order in order to be the beneficiary's bank; and

(2) the term includes a Federal Reserve Bank when that Federal Reserve Bank is the beneficiary of a payment order.

(e) *Fedwire* is the funds-transfer system owned and operated by the Federal Reserve Banks that is used primarily for the transmission and settlement of payment orders governed by this subpart. Fedwire does not include the system for making automated clearinghouse transfers.

(f) *Inter-District transfer* means a funds transfer involving entries to accounts maintained at two Federal Reserve Banks.

(g) *Intra-District transfer* means a funds transfer involving entries to accounts maintained at one Federal Reserve Bank.

(h) *Off-line bank* means a bank that transmits payment orders to and receives payment orders from a Federal Reserve Bank by telephone orally or by other means other than electronic data transmission.

(i) *Payment order* has the same meaning as in article 4A, except that the term does not include automated clearinghouse transfers or any communication designated in a Federal Reserve Bank operating circular issued under this subpart as not being a payment order.

(j) *Sender's account, receiving bank's account, and beneficiary's account* mean the reserve, clearing, or other funds deposit account at a Federal Reserve Bank maintained or used by the sender, receiving bank, or beneficiary, respectively.

(k) *Sender's Federal Reserve Bank and receiving bank's Federal Reserve Bank* mean the Federal Reserve Bank at which the sender or receiving bank, respectively, maintains or uses an account.

SECTION 210.27—Reliance on Identifying Number

(a) *Reliance by a Federal Reserve Bank on number to identify an intermediary bank or beneficiary's bank.* A Federal Reserve Bank

may rely on the number in a payment order that identifies the intermediary bank or beneficiary's bank, even if it identifies a bank different from the bank identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

(b) *Reliance by a Federal Reserve Bank on number to identify beneficiary.* A Federal Reserve Bank, acting as a beneficiary's bank, may rely on the number in a payment order that identifies the beneficiary, even if it identifies a person different from the person identified by name in the payment order, if the Federal Reserve Bank does not know of such an inconsistency in identification. A Federal Reserve Bank has no duty to detect any such inconsistency in identification.

SECTION 210.28—Agreement of Sender

(a) *Payment of sender's obligation to a Federal Reserve Bank.* A sender (other than a Federal Reserve Bank), by maintaining or using an account with a Federal Reserve Bank, authorizes the sender's Federal Reserve Bank to obtain payment for the sender's payment orders by debiting the amount of the payment order from the sender's account.

(b) *Overdrafts.*

(1) A sender does not have the right to an overdraft in the sender's account. In the event an overdraft is created, the overdraft shall be due and payable immediately without the need for a demand by the Federal Reserve Bank, at the earliest of the following times:

(i) at the end of the funds-transfer business day;

(ii) at the time the Federal Reserve Bank, in its sole discretion, deems itself insecure and gives notice thereof to the sender; or

(iii) at the time the sender suspends payments or is closed.

(2) The sender shall have in its account, at the time the overdraft is due and payable, a balance of actually and finally collected

funds sufficient to cover the aggregate amount of all its obligations to the Federal Reserve Bank, whether the obligations result from the execution of a payment order or otherwise.

(3) To secure any overdraft, as well as any other obligation due or to become due to its Federal Reserve Bank, each sender, by sending a payment order to a Federal Reserve Bank that is accepted by the Federal Reserve Bank, grants to the Federal Reserve Bank a security interest in all of the sender's assets in the possession of, or held for the account of, the Federal Reserve Bank. The security interest attaches when an overdraft, or any other obligation to the Federal Reserve Bank, becomes due and payable.

(4) A Federal Reserve Bank may take any action authorized by law to recover the amount of an overdraft that is due and payable, including, but not limited to, the exercise of rights of set off, the realization on any available collateral, and any other rights it may have as a creditor under applicable law.

(5) If a sender, other than a government sender described in section 210.25(d) of this part, incurs an overdraft in its account as a result of a debit to the account by a Federal Reserve Bank under paragraph (a) of this section, the account will be subject to any applicable overdraft charges, regardless of whether the overdraft has become due and payable. A Federal Reserve Bank may debit a sender's account under paragraph (a) of this section immediately on acceptance of the payment order.

(c) *Review of payment orders.* A sender, by sending a payment order to a Federal Reserve Bank, agrees that for the purposes of sections 4A-204(a) and 4A-304 of article 4A, a reasonable time to notify a Federal Reserve Bank of the relevant facts concerning an unauthorized or erroneously executed payment order is within 30 calendar days after the sender receives notice that the payment order was accepted or executed, or that the sender's account was debited with respect to the payment order.

SECTION 210.29—Agreement of Receiving Bank

(a) *Payment.* A receiving bank (other than a Federal Reserve Bank) that receives a payment order from its Federal Reserve Bank authorizes that Federal Reserve Bank to pay for the payment order by crediting the amount of the payment order to the receiving bank's account.

(b) *Off-line banks.* An off-line bank that does not expressly notify its Federal Reserve Bank in writing that it maintains an account for another bank warrants to that Federal Reserve Bank that the off-line bank does not act as an intermediary bank or a beneficiary's bank with respect to payment orders received through Fedwire for a beneficiary that is a bank.

SECTION 210.30—Payment Orders

(a) *Rejection.* A sender shall not send a payment order to a Federal Reserve Bank unless authorized to do so by the Federal Reserve Bank. A Federal Reserve Bank may reject, or impose conditions that must be satisfied before it will accept, a payment order for any reason.

(b) *Selection of an intermediary bank.* For an inter-District transfer, a Federal Reserve Bank is authorized and directed to execute a payment order through another Federal Reserve Bank. A sender shall not send a payment order to a Federal Reserve Bank that requires the Federal Reserve Bank to issue a payment order to an intermediary bank (other than a Federal Reserve Bank) unless that intermediary bank is designated in the sender's payment order. A sender shall not send to a Federal Reserve Bank a payment order instructing use by a Federal Reserve Bank of a funds-transfer system or means of transmission other than Fedwire, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

(c) *Same-day execution.* A sender shall not issue a payment order that instructs a Federal Reserve Bank to execute the payment order on a funds-transfer business day that is later than the funds-transfer business day on which

the order is received by the Federal Reserve Bank, unless the Federal Reserve Bank agrees with the sender in writing to follow such instructions.

SECTION 210.31—Payment by a Federal Reserve Bank to a Receiving Bank or Beneficiary

(a) *Payment to a receiving bank.* Payment of a Federal Reserve Bank's obligation to pay a receiving bank (other than a Federal Reserve Bank) occurs at the earlier of the time when the amount of the payment order is credited to the receiving bank's account or when the payment order is sent to the receiving bank.

(b) *Payment to a beneficiary.* Payment by a Federal Reserve Bank to a beneficiary of a payment order, where the Federal Reserve Bank is the beneficiary's bank, occurs at the earlier of the time when the amount of the payment order is credited to the beneficiary's account or when notice of the credit is sent to the beneficiary.

SECTION 210.32—Federal Reserve Bank Liability; Payment of Interest

(a) *Damages.* In connection with its handling of a payment order under this subpart, a Federal Reserve Bank shall not be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank, governed by this subpart, for any damages other than those payable under article 4A. A Federal Reserve Bank shall not agree to be liable to a sender, receiving bank, beneficiary, or other Federal Reserve Bank for consequential damages under section 4A-305(d) of article 4A.

(b) *Payment of interest.*

(1) A Federal Reserve Bank, in its discretion, may satisfy its obligation, or that of another Federal Reserve Bank, to pay compensation in the form of interest under article 4A by—

(i) providing an as-of adjustment to its sender, its receiving bank, or its beneficiary, as provided in the Federal Reserve

Bank's operating circular, in an amount equal to the amount on which interest is to be calculated multiplied by the number of days for which interest is to be calculated; or

(ii) paying compensation in the form of interest to its sender, its receiving bank, its beneficiary, or another party to the funds transfer that is entitled to such payment, in an amount that is calculated in accordance with section 4A-506 of article 4A.

(2) If the sender or receiving bank that is the recipient of an as-of adjustment or an interest payment is not the party entitled to compensation under article 4A, the sender or receiving bank shall pass through the benefit of the as-of adjustment or interest payment by making an interest payment, as of the day the as-of adjustment or interest payment is effected, to the party entitled to compensation. The interest payment that is made to the party entitled to compensation shall not be less than the value of the as-of adjustment or interest payment that was provided by the Federal Reserve Bank to the sender or receiving bank. The party entitled to compensation may agree to accept compensation in a form other than a direct interest payment, provided that such an alternative form of compensation is not less than the value of the interest payment that otherwise would be made.

(c) *Nonwaiver of right of recovery.* Nothing in this subpart or any operating circular issued hereunder shall constitute, or be construed as constituting, a waiver by a Federal Reserve Bank of a cause of action for recovery under any applicable law of mistake and restitution.

APPENDIX A TO SUBPART B— Commentary

See page 17.

APPENDIX B TO SUBPART B— UCC Article 4A

See page 27.



Commentary on Regulation J

12 CFR 210, appendix A to subpart B; effective January 1, 1991

The commentary provides background material to explain the intent of the Board of Governors of the Federal Reserve System (Board) in adopting a particular provision in the subpart and to help readers interpret that provision. In some comments, examples are offered. The commentary constitutes an official Board interpretation of subpart B of this part. Commentary is not provided for every provision of subpart B of this part, as some provisions are self-explanatory.

SECTION 210.25—Authority, Purpose, and Scope

25(a) Authority and Purpose

Section 210.25(a) states that the purpose of subpart B of this part is to provide rules to govern funds transfers through Fedwire and recites the Board's rulemaking authority for this subpart. Subpart B is federal law and is not a "funds-transfer system rule," as defined in section 4A-501(b) of article 4A, Funds Transfers, of the Uniform Commercial Code (UCC), as set forth in appendix B of this part. Certain provisions of article 4A may not be varied by a funds-transfer system rule, but under section 4A-107, regulations of the Board and operating circulars of the Federal Reserve Banks supersede inconsistent provisions of article 4A to the extent of the inconsistency. In addition, regulations of the Board may preempt inconsistent provisions of state law. Accordingly, subpart B of this part supersedes or preempts inconsistent provisions of state law. It does not affect state law governing funds transfers that does not conflict with the provisions of subpart B of this part, such as article 4A, as enacted in any state, as it applies to parties to funds transfers through Fedwire whose rights are not governed by subpart B of this part.

25(b) Scope

Subpart B of this part incorporates the provisions of article 4A set forth in appendix B of

this part. The provisions set forth expressly in the sections of subpart B of this part supersede or preempt any inconsistent provisions of article 4A as set forth in appendix B of this part or as enacted in any state. The official comments to article 4A are not incorporated in subpart B of this part or this commentary to subpart B of this part, but the official comments may be useful in interpreting article 4A. Because section 4A-105 refers to other provisions of the Uniform Commercial Code, e.g., definitions in article 1 of the UCC, these other provisions of the UCC, as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, from time to time, are also incorporated in subpart B of this part. Subpart B of this part applies to any party to a Fedwire funds transfer that is in privity with a Federal Reserve Bank. These parties include a sender (bank or nonbank) that sends a payment order directly to a Federal Reserve Bank, a receiving bank that receives a payment order directly from a Federal Reserve Bank, and a beneficiary that receives credit to an account that it uses or maintains at a Federal Reserve Bank for a payment order sent to a Federal Reserve Bank. Other parties to a funds transfer are covered by this subpart to the same extent that this subpart would apply to them if this subpart were a "funds-transfer system rule" under article 4A that selected subpart B of this part as the governing law.

The scope of the applicability of a funds-transfer system rule under article 4A is specified in section 4A-501(b), and the scope of the choice of law provision is specified in section 4A-507(c). Under section 4A-507(c), a choice of law provision is binding on the participants in a funds-transfer system and certain other parties having notice that the funds-transfer system might be used for the funds transfer and of the choice of law provision. The Uniform Commercial Code provides that a person has notice when the person has actual knowledge, receives notification, or has reason to know from all the facts and circumstances known to the person at the time in

question. (See UCC § 1-201(25).) However, under sections 4A-507(b) and 4A-507(d), a choice of law by agreement of the parties takes precedence over a choice of law made by funds-transfer system rule.

If originators, receiving banks, and beneficiaries that are not in privity with a Federal Reserve Bank have the notice contemplated by Section 4A-507(c) or if those parties agree to be bound by subpart B of this part, subpart B of this part generally would apply to payment orders between those remote parties, including participants in other funds-transfer systems. For example, a funds transfer may be sent from an originator's bank through a funds-transfer system other than Fedwire to a receiving bank which, in turn, sends a payment order through Fedwire to execute the funds transfer. Similarly, a Federal Reserve Bank may execute a payment order through Fedwire to a receiving bank that sends it through a funds-transfer system other than Fedwire to a beneficiary's bank. In the first example, if the originator's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order through the other funds-transfer system to the receiving bank will be governed by subpart B of this part unless the parties to the payment order have agreed otherwise. In the second example, if the beneficiary's bank has notice that Fedwire may be used to effect part of the funds transfer, the sending of the payment order to the beneficiary's bank through the other funds-transfer system will be governed by subpart B of this part unless the parties have agreed otherwise. In both cases, the other funds-transfer system's rules would also apply to, at a minimum, the portion of these funds transfers going through that funds transfer system. Because subpart B of this part is federal law, to the extent of any inconsistency, subpart B of this part will take precedence over any funds-transfer system rule applicable to the remote sender or receiving bank or to a Federal Reserve Bank. If remote parties to a funds transfer, a portion of which is sent through Fedwire, have expressly selected by agreement a law other than subpart B of this part under section 4A-507(b), subpart B of this part would not take precedence over the choice of law made by the agreement

even though the remote parties had notice that Fedwire may be used and of the governing law. (See 4A-507(d).) In addition, subpart B of this part would not apply to a funds transfer sent through another funds-transfer system where no Federal Reserve Bank handles the funds transfer, even though settlement for the funds transfer is made by means of a separate net settlement or funds transfer through Fedwire.

Under section 4A-108, article 4A does not apply to a funds transfer, any part of which is governed by the Electronic Fund Transfer Act (15 USC 1693 et seq.). Fedwire funds transfers to or from consumer accounts are exempt from the Electronic Fund Transfer Act and Regulation E (12 CFR 205). A funds transfer from a consumer originator or a funds transfer to a consumer beneficiary could be carried out in part through Fedwire and in part through an automated clearinghouse or other means that is subject to the Electronic Fund Transfer Act or Regulation E. In these cases, subpart B would not govern the portion of the funds transfer that is governed by the Electronic Fund Transfer Act or Regulation E. (See the commentary to section 210.26(i), "Payment Order".)

Finally, section 4A-404(a) provides that a beneficiary's bank is obliged to pay the amount of a payment order to the beneficiary on the payment date unless acceptance of the payment order occurs on the payment date after the close of the funds-transfer business day of the bank. The Expedited Funds Availability Act provides that funds received by a bank by wire transfer shall be available for withdrawal not later than the banking day after the business day on which such funds are received (12 USC 4002(a)). That act also preempts any provision of state law that was not effective on September 1, 1989, that is inconsistent with that act or its implementing Regulation CC (12 CFR 229). Accordingly, the Expedited Funds Availability Act and Regulation CC may preempt section 4A-404(a) as enacted in any state. In order to ensure that section 4A-404(a), or other provisions of article 4A, as incorporated in subpart B of this part, do not take precedence over provisions of the Expedited Funds Availability Act, this section provides that where subpart B of this part

establishes rights or obligations that are also governed by the Expedited Funds Availability Act or Regulation CC, the Expedited Funds Availability Act or Regulation CC provision shall apply and subpart B of this part shall not apply.

25(c) Operating Circulars

The Federal Reserve Banks issue operating circulars consistent with this subpart that contain additional provisions applicable to payment orders sent through Fedwire. Under section 4A-107, these operating circulars supersede inconsistent provisions of article 4A, as set forth in appendix B and as enacted in any state. These operating circulars are not funds-transfer system rules, but, by their terms, they are binding on all parties covered by this subpart.

25(d) Government Senders, Receiving Banks, and Beneficiaries

This section clarifies that unless a statute of the United States provides otherwise, subpart B of this part applies to governmental entities, domestic or foreign, including foreign central banks as specified in paragraph (b)(1).

SECTION 210.26—Definitions

Article 4A defines many terms (e.g., “beneficiary,” “intermediary bank,” “receiving bank,” “security procedure”) used in this subpart. These terms are defined or listed in sections 4A-103 through 4A-105. These terms, such as the term “bank” (defined in section 4A-105(d)(2)), may differ from comparable terms in subpart A of this part. As subpart B of this part incorporates consistent provisions of article 4A, it incorporates these definitions unless these terms are expressly defined otherwise in subpart B of this part. This subpart modifies the definitions of two article 4A terms, “beneficiary’s bank” and “payment order.” This subpart also defines terms not defined in article 4A.

26(a) Article 4A

“Article 4A” means the version of that article of the Uniform Commercial Code set forth in

appendix B of this part. It does not refer to the law of any particular state unless the context indicates otherwise. Subject to the express provisions of this subpart, this version of article 4A is incorporated into this subpart and made federal law for transactions covered by this subpart.

26(b) As-of Adjustments

As-of adjustments are memorandum items that affect a bank’s reserve or clearing balance for the purpose of meeting the required balance, but do not represent funds that can be used for other purposes. As discussed in the commentary to section 210.32(b), the Federal Reserve Banks generally provide as-of adjustments as a means of effecting interest payments or charges.

26(d) Beneficiary’s Bank

The definition of “beneficiary’s bank” in subpart B of this part differs from the section 4A-103(a)(3) definition. The subpart B definition clarifies that where a Federal Reserve Bank functions as the beneficiary’s bank, it need not be identified in the payment order as the beneficiary’s bank and that a Federal Reserve Bank that receives a payment order as beneficiary is also the beneficiary’s bank with respect to that payment order.

26(e) Fedwire

Fedwire refers to the funds-transfer system owned and operated by the Federal Reserve Banks that is governed by this subpart. The term does not refer to any particular computer, telecommunications facility, or funds transfer, but to the system as a whole, which may include transfers by telephone or by written instrument in particular circumstances. Fedwire does not include the system used for automated clearinghouse transfers.

26(h) Off-Line Bank

Most Fedwire payment orders are transmitted electronically from a sender to a Federal Reserve Bank or from a Federal Reserve Bank to a receiving bank. Banks transmitting payment orders to Federal Reserve Banks electronically are often referred to as on-line

banks. Some Fedwire participants, however, transmit payment orders to a Federal Reserve Bank or receive payment orders from a Federal Reserve Bank orally by telephone, or, in unusual circumstances, in writing. A bank that does not use either a terminal or a computer that links it electronically to a terminal or computer at its Federal Reserve Bank to send payment orders through Fedwire is an off-line bank.

26(i) Payment Order

The definition of "payment order" in subpart B of this part differs from the section 4A-103(a)(1) definition. The subpart B definition clarifies that, for the purposes of subpart B of this part, automated clearinghouse transfers and certain messages that are transmitted through Fedwire are not payment orders. Federal Reserve Banks and banks participating in Fedwire send various types of messages relating to payment orders or to other matters, through Fedwire, that are not intended to be payment orders. Under the subpart B definition, these messages, and messages involved with automated clearinghouse transfers, are not "payment orders" and therefore are not governed by this subpart. The operating circulars of the Federal Reserve Banks specify those messages that may be transmitted through Fedwire but that are not payment orders.

In some cases, messages sent through Fedwire, such as certain requests for credit transfer, may be payment orders under article 4A, but are not treated as payment orders under subpart B because they are not an instruction to a Federal Reserve Bank to pay money.

This subpart and article 4A govern a payment order even though the originator's or beneficiary's account may be a consumer account established primarily for personal, family, or household purposes. Under section 4A-108, article 4A does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act. That act, and Regulation E implementing it, do not apply to funds transfers through Fedwire (*see* 15 USC 1693a(6)(B) and 12 CFR 205.3(b)). Thus, this subpart applies to all funds transfers through

Fedwire even though some such transfers involve originators or beneficiaries that are consumers. (*See also* section 210.25(b) and accompanying commentary.)

SECTION 210.27—Reliance on Identifying Number

27(a) Reliance by a Federal Reserve Bank on Number to Identify Intermediary Bank or Beneficiary's Bank

Section 4A-208 provides that a receiving bank, such as a Federal Reserve Bank, may rely on the routing number of an intermediary bank or the beneficiary's bank specified in a payment order as identifying the appropriate intermediary bank or beneficiary's bank, even if the payment order identifies another bank by name, provided that the receiving bank does not know of the inconsistency. Under section 4A-208(b)(2), if the sender of the payment order is not a bank, a receiving bank may rely on the number only if the sender had notice before the receiving bank accepted the sender's order that the receiving bank might rely on the number. This section provides this notice to entities that are not banks, such as the Department of the Treasury, that send payment orders directly to a Federal Reserve Bank.

27(b) Reliance by a Federal Reserve Bank on Number to Identify Beneficiary

Section 4A-207 provides that a beneficiary's bank, such as a Federal Reserve Bank, may rely on the number identifying a beneficiary, such as the beneficiary's account number, specified in a payment order as identifying the appropriate beneficiary, even if the payment order identifies another beneficiary by name, provided that the beneficiary's bank does not know of the inconsistency. Under section 4A-207(c)(2), if the originator is not a bank, an originator is not obliged to pay for a payment order if the originator did not have notice that the beneficiary's bank might rely on the identifying number and the person paid on the basis of the identifying number was not entitled to receive payment. This section of subpart B provides this notice to entities that are

not banks, such as the Department of the Treasury, that are originators of payment orders sent directly by the originators to a Federal Reserve Bank, where that Federal Reserve Bank or another Federal Reserve Bank is the beneficiary's bank (*see also* section 4A-402(b), providing that a sender must pay a beneficiary's bank for a payment order accepted by the beneficiary's bank).

SECTION 210.28—Agreement of Sender

28(a) Payment of Sender's Obligation to a Federal Reserve Bank

When a sender issues a payment order to a Federal Reserve Bank and the Federal Reserve Bank issues a conforming order implementing the sender's payment order, under section 4A-403, the sender is indebted to the Federal Reserve Bank for the amount of the payment order. A sender, other than a Federal Reserve Bank, that maintains or uses an account at a Federal Reserve Bank authorizes the Federal Reserve Bank to debit that account so that the Federal Reserve Bank can obtain payment for the payment order.

28(b) Overdrafts

In some cases, debits to a sender's account will create an overdraft in the sender's account. The Board and the Federal Reserve Banks have established policies concerning when a Federal Reserve Bank will permit a bank to incur an overdraft in its account at a Federal Reserve Bank. These policies do not give a bank or other sender a right to an overdraft in its account. Subpart B clarifies that a sender does not have a right to such an overdraft. If an overdraft arises, it becomes immediately due and payable at the earliest of: the end of the funds-transfer business day of the Federal Reserve Bank; the time the Federal Reserve Bank, in its sole discretion, deems itself insecure and gives notice to the sender; or the time that the sender suspends payments or is closed by governmental action, such as the appointment of a receiver. In some cases, a Federal Reserve Bank extends its Fedwire operations beyond its cutoff hour for that funds-transfer business day. For the pur-

poses of this section, unless otherwise specified by the Federal Reserve Bank making such an extension, an overdraft becomes due and payable at the end of the extended operating hours. An overdraft becomes due and payable prior to a Federal Reserve Bank's cutoff hour if the Federal Reserve Bank deems itself insecure and gives notice to the sender. Notice that the Federal Reserve Bank deems itself insecure may be given in accordance with the provisions on notice in section 1-201(27) of the UCC, in accordance with any other applicable law or agreement, or by any other reasonable means. An overdraft also becomes due and payable at the time that a bank is closed or suspends payments. For example, an overdraft becomes due and payable if a receiver is appointed for the bank or the bank is prevented from making payments by governmental order. The Federal Reserve Bank need not make demand on the sender for the overdraft to become due and payable.

A sender must cover any overdraft and any other obligation of the sender to the Federal Reserve Bank by the time the overdraft becomes due and payable. By sending a payment order to a Federal Reserve Bank, the sender grants a security interest to the Federal Reserve Bank in any assets of the sender held by, or for the account of, the Federal Reserve Bank in order to secure all obligations due or to become due to the Federal Reserve Bank. The security interest attaches when the overdraft, or other obligation of the sender to the Federal Reserve Bank, becomes due and payable. The security interest does not apply to assets held by the sender as custodian or trustee for the sender's customers or third parties. Once an overdraft is due and payable, a Federal Reserve Bank may exercise its right of set-off, liquidate collateral, or take other similar action to satisfy the overdrafting bank's obligation owed to the Federal Reserve Bank.

28(c) Review of Payment Orders

Under section 4A-204, a receiving bank is required to refund the principal amount of an unauthorized payment order that the sender was not obliged to pay, together with interest on the refundable amount calculated from the

date that the receiving bank received payment to the date of the refund. The sender is not entitled to compensation in the form of interest if the sender fails to exercise ordinary care to determine that the order was not authorized and to notify the receiving bank within a reasonable period of time after the sender receives a notice that the payment order was accepted or that the sender's account was debited with respect to the order. Similarly, under section 4A-304, if a sender of a payment order that was erroneously executed does not notify the bank receiving the payment order within a reasonable time, the bank is not liable to the sender for compensation in the form of interest on any amount refundable to the sender. Section 210.28(d) establishes 30 calendar days as the reasonable period of time for the purposes of these provisions of article 4A.

Section 4A-505 provides that a customer must object to a debit to its account by a receiving bank within one year after the customer received notification reasonably identifying the payment order. Subpart B of this part does not vary this one-year period.

SECTION 210.29—Agreement of Receiving Bank

29(b) Off-Line Banks

Generally, an on-line bank receiving payment orders or advices of credit for payment orders from a Federal Reserve Bank receives the payment orders or advices electronically a short time after the corresponding payment orders are received by the on-line bank's Federal Reserve Bank. An off-line bank receiving payment orders or advices of credit from a Federal Reserve Bank does not have an electronic connection with the Federal Reserve Bank; therefore, payment orders or advices are transmitted either by telephone on the day the payment order is received by the receiving bank's Federal Reserve Bank, or sent by courier or mail along with the off-line bank's daily account statement, on the funds-transfer business day following the day the payment order is received by the off-line bank's Federal Reserve Bank.

Under section 4A-302(a)(2), a Federal Reserve Bank must transmit payment orders at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date, or as soon thereafter as is feasible. Therefore, where an off-line receiving bank is an intermediary bank or beneficiary's bank in a payment order, its Federal Reserve Bank attempts to transmit the payment order to the off-line bank by telephone on the day the payment order is received by the Federal Reserve Bank. A Federal Reserve Bank can generally identify these payment orders from the type code designated in the payment order.

Under section 4A-404(b), if a payment order instructs payment to the account of the beneficiary, the beneficiary's bank must notify the beneficiary of the receipt of a payment order before midnight of the next funds-transfer business day following the payment date. Where an off-line bank is the beneficiary of a payment order, telephone notice by a Federal Reserve Bank to the off-line bank of the receipt of the order is not required by Article 4A because the Federal Reserve Bank sends notice to the off-line bank by courier or mail, along with its daily account statement, on the day after the payment order is received by its Federal Reserve Bank. Payment orders for which an off-line bank is the beneficiary of the order are generally designated as settlement transactions.

If an off-line receiving bank maintains an account for another bank, the off-line bank may receive payment orders designated as settlement transactions in its capacity as beneficiary's bank or intermediary bank. A Federal Reserve Bank cannot readily distinguish these payment orders from settlement transactions for which the off-line bank is the beneficiary of the order. If an off-line bank notifies its Federal Reserve Bank that it maintains an account for another bank, the Federal Bank will attempt to telephone the off-line bank with respect to all settlement transactions received by such bank, whether the off-line bank is the beneficiary, the beneficiary's bank, or an intermediary bank in the payment order. Under this section, an off-line bank that does not expressly notify its Federal Reserve Bank in writing that it maintains an account for another bank warrants to that Federal Reserve

Bank that it does not act as an intermediary bank or a beneficiary's bank for a bank beneficiary with respect to payment orders received through Fedwire.

SECTION 210.30—Payment Orders

30(a) Rejection

A sender must make arrangements with its Federal Reserve Bank before it can send payment orders to the Federal Reserve Bank. Federal Reserve Banks reserve the right to reject or impose conditions on the acceptance of payment orders for any reason. For example, a Federal Reserve Bank might reject or impose conditions on accepting a payment order where a sender does not have sufficient funds in its account with the Federal Reserve Bank to cover the amount of the sender's payment order and other obligations of the sender due or to become due to the Federal Reserve Bank. A Federal Reserve Bank may require a sender to execute a written agreement concerning security procedures or other matters before the sender may send payment orders to the Federal Reserve Bank.

30(b) Selection of an Intermediary Bank

Under section 4A-302, if a receiving bank (other than a beneficiary's bank), such as a Federal Reserve Bank, accepts a payment order, it must issue a payment order that complies with the sender's order. The sender's order may include instructions concerning an intermediary bank to be used that must be followed by a receiving bank (*see* section 4A-302(a)(1)). If the sender does not designate any intermediary bank in its payment order, the receiving bank may select an intermediary bank through which the sender's payment order can be expeditiously issued to the beneficiary's bank so long as the receiving bank exercises ordinary care in selecting the intermediary bank (*see* section 4A-302(b)).

This section provides that in an inter-District transfer, a Federal Reserve Bank is authorized and directed to select another Federal Reserve Bank as an intermediary bank. A sender may, however, instruct a Federal Reserve Bank to use a particular intermediary

bank by designating that bank as the bank to be credited by that Federal Reserve Bank (or the second Federal Reserve Bank in the case of an inter-District transfer) in its payment order, in which case the Federal Reserve Bank will send the payment order to that bank if that bank receives payment orders through Fedwire. A sender may not instruct a Federal Reserve Bank to use its discretion to select an intermediary bank other than a Federal Reserve Bank or an intermediary bank designated by the sender. In addition, a sender may not instruct a Federal Reserve Bank to use a funds-transfer system or means of transmission other than Fedwire unless the sender and the Federal Reserve Bank agree in writing to the use of the funds-transfer system or means of transmission.

30(c) Same-Day Execution

Generally, Fedwire is a same-day value transfer system through which funds may be transferred from the originator to the beneficiary on the same funds-transfer business day. A sender may not send a payment order to a Federal Reserve Bank that specifies an execution date or payment date later than the day on which the payment order is issued, unless the sender of the order and the Federal Reserve Bank agree in writing to the arrangement.

SECTION 210.31—Payment by a Federal Reserve Bank to a Receiving Bank or Beneficiary

31(a) Payment to a Receiving Bank

Under section 4A-402, when a Federal Reserve Bank executes a sender's payment order by issuing a conforming order to a receiving bank that accepts the payment order, the Federal Reserve Bank must pay the receiving bank the amount of the payment order. Section 210.29(a) authorizes a Federal Reserve Bank to make the payment by crediting the account at the Federal Reserve Bank maintained or used by the receiving bank. Section 210.31(a) provides that the payment occurs when the receiving bank's account is credited or when the payment order is sent by the

Federal Reserve Bank to the receiving bank, whichever is earlier. Ordinarily, payment will occur during the funds-transfer business day a short time after the payment order is received, even if the receiving bank is an off-line bank. This credit is final and irrevocable when made and constitutes final settlement under section 4A-403. Payment does not waive a Federal Reserve Bank's right of recovery under the applicable law of mistake and restitution (*see* section 210.32(c)), affect a Federal Reserve Bank's right to apply the funds to any obligation due or to become due to the Federal Reserve Bank, or affect legal process or claims by third parties on the funds.

This section on final payment does not apply to settlement for payment orders between Federal Reserve Banks. These payment orders are settled by other means.

31(b) Payment to a Beneficiary

Section 210.31(b) specifies when a Federal Reserve Bank makes payment to a beneficiary for which it is the beneficiary's bank. As in the case of payment to a receiving bank, this payment occurs at the earlier of the time that the Federal Reserve Bank credits the beneficiary's account or sends notice of the credit to the beneficiary, and is final and irrevocable when made.

SECTION 210.32—Federal Reserve Bank Liability; Payment of Interest

32(a) Damages

Under section 4A-305(d), damages for failure of a receiving bank to execute a payment order that it was obliged to execute by express agreement are limited to expenses in the transaction and incidental expenses and interest and do not include additional damages, including consequential damages, unless they are provided for in an express written agreement of the receiving bank. This section clarifies that in connection with the handling of payment orders, Federal Reserve Banks may not agree to be liable for consequential damages under this provision and shall not be liable for damages other than those that may be due under article 4A to parties governed by

this subpart. Any agreement in conflict with these provisions would not be effective, because it would be in violation of subpart B.

This section does not affect the ability of other parties to a funds transfer to agree to be liable for consequential damages, the liability of a Federal Reserve Bank under section 4A-404, or the liability to parties governed by subpart B for claims not based on the handling of a payment order under this subpart.

32(b) Payment of Interest

Under article 4A, a Federal Reserve Bank may be required to pay compensation in the form of interest to another party in connection with its handling of a funds transfer. For example, payment of compensation in the form of interest is required in certain situations pursuant to sections 4A-204 (relating to refund of payment and duty of customer to report with respect to unauthorized payment order), 4A-209 (relating to acceptance of payment order), 4A-210 (relating to rejection of payment order), 4A-304 (relating to duty of sender to report erroneously executed payment order), 4A-305 (relating to liability for late or improper execution or failure to execute a payment order), 4A-402 (relating to obligation of sender to pay receiving bank), and 4A-404 (relating to obligation of beneficiary's bank to pay and give notice to beneficiary). Under section 4A-506(a), the amount of such interest may be determined by agreement between the sender and receiving bank or by funds-transfer system rule. If there is no such agreement, under section 4A-506(b), the amount of interest is based on the federal funds rate. Section 210.32(b) provides two means by which Federal Reserve Banks may provide compensation in the form of interest: through an as-of adjustment or through an explicit interest payment.

An as-of adjustment is a memorandum credit or debit that is applied to the reserve or clearing balance of the bank that sent the payment order to, or received the payment order from, a Federal Reserve Bank. Federal Reserve Banks generally provide as-of adjustments to correct errors and recover float. An as-of adjustment differs from a debit or credit to an account in that it does not affect the

actual balance of the account; it only affects the balance for reserve- or clearing-balance computation purposes. These adjustments affect the level of reserve or clearing balances that the bank must fund by other means and are therefore an effective substitute for explicit interest payments.

A party that sent or received a payment order from a Federal Reserve Bank may be unable to make use of an as-of adjustment as compensation in lieu of explicit interest. For example, if the sender or receiving bank is not subject to reserve requirements or satisfies its reserve requirements with vault cash, the as-of adjustment could not be used to free other balances for investment. A Federal Reserve Bank may, in its discretion, provide compensation by an explicit interest payment rather than through an as-of adjustment. Interest would be calculated in accordance with the procedures specified in section 4A-506(b). Similarly, compensation in the form of explicit interest will be paid to government senders, receiving banks, or beneficiaries described in section 210.25(d) if they are entitled to interest under this subpart. A Federal Reserve Bank may also, in its discretion, pay explicit interest directly to a remote party to a Fedwire funds transfer that is entitled to interest, rather than providing compensation to its direct sender or receiving bank.

If a bank that received an as-of adjustment or explicit interest payment is not the party entitled to interest compensation under article 4A, the bank must pass the benefit of the as-of adjustment or explicit interest payment made to it to the party that is entitled to compensation in the form of interest from a Federal Reserve Bank. The benefit may be passed on either in the form of a direct payment of interest or in the form of a compensating balance, if the party entitled to interest agrees to accept the other form of compensation, and the value of the compensating balance is at least equivalent to the value of the explicit interest that otherwise would have been provided.

32(c) Nonwaiver of Right of Recovery

Several sections of article 4A allow for a party to a funds transfer to make a claim pursuant to the applicable law of mistake and restitution. Nothing in subpart B of this part or any operating circular issued under subpart B waives any such claim. A Federal Reserve Bank, however, may waive such a claim by express written agreement in order to settle litigation or for other purposes.



Uniform Commercial Code Article 4A

Funds Transfers

12 CFR 210, appendix B to subpart B

PART 1—SUBJECT MATTER AND DEFINITIONS

SECTION 4A-101—Short Title

This Article may be cited as Uniform Commercial Code—Funds Transfers.

SECTION 4A-102—Subject Matter

Except as otherwise provided in Section 4A-108, this Article applies to funds transfers defined in Section 4A-104.

SECTION 4A-103—Payment Order; Definitions

(a) In this Article:

(1) “Payment order” means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) “Beneficiary” means the person to be paid by the beneficiary’s bank.

(3) “Beneficiary’s bank” means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) “Receiving bank” means the bank to which the sender’s instruction is addressed.

(5) “Sender” means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

SECTION 4A-104—Funds Transfer; Definitions

In this Article:

(a) “Funds transfer” means the series of transactions, beginning with the originator’s payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator’s bank or an intermediary bank intended to carry out the originator’s payment order. A funds transfer is completed by acceptance by the beneficiary’s bank of a payment order for the benefit of the beneficiary of the originator’s payment order.

(b) “Intermediary bank” means a receiving bank other than the originator’s bank or the beneficiary’s bank.

(c) “Originator” means the sender of the first payment order in a funds transfer.

(d) “Originator’s bank” means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

SECTION 4A-105—Other Definitions

(a) In this Article:

(1) “Authorized account” means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment

of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 1-201(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	Section 4A-209
"Beneficiary"	Section 4A-103
"Beneficiary's bank"	Section 4A-103
"Executed"	Section 4A-301
"Execution date"	Section 4A-301
"Funds transfer"	Section 4A-104
"Funds-transfer system rule"	Section 4A-501
"Intermediary bank"	Section 4A-104
"Originator"	Section 4A-104
"Originator's bank"	Section 4A-104
"Payment by beneficiary's bank to beneficiary"	Section 4A-405
"Payment by originator to beneficiary"	Section 4A-406

"Payment by sender to receiving bank"	Section 4A-403
"Payment date"	Section 4A-401
"Payment order"	Section 4A-103
"Receiving bank"	Section 4A-103
"Security procedure"	Section 4A-201
"Sender"	Section 4A-103

(c) The following definitions in Article 4 apply to this Article:

"Clearing house"	Section 4-104
"Item"	Section 4-104
"Suspends payments"	Section 4-104

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

SECTION 4A-106—Time Payment Order Is Received

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1-201(27). A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the

date or day stated, unless the contrary is stated in this Article.

SECTION 4A-107—Federal Reserve Regulations and Operating Circulars

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

SECTION 4A-108—Exclusion of Consumer Transactions Governed by Federal Law

This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.) as amended from time to time.

PART 2—ISSUE AND ACCEPTANCE OF PAYMENT ORDER

SECTION 4A-201—Security Procedure

“Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

SECTION 4A-202—Authorized and Verified Payment Orders

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized

the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term “sender” in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is

effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in Section 4A-203(a)(1), rights and obligations arising under this section or Section 4A-203 may not be varied by agreement.

SECTION 4A-203—Unenforceability of Certain Verified Payment Orders

(a) If an accepted payment order is not, under Section 4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 4A-202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

SECTION 4A-204—Refund of Payment and Duty of Customer to Report with Respect to Unauthorized Payment Order

(a) If a receiving bank accepts a payment order issued in the name of its customer as

sender which is (i) not authorized and not effective as the order of the customer under Section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section 1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

SECTION 4A-205—Erroneous Payment Orders

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged

to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

SECTION 4A-206—Transmission of Payment Order Through Funds-Transfer or Other Communication System

(a) If a payment order addressed to a receiv-

ing bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

SECTION 4A-207—Misdescription of Beneficiary

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsec-

tion (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

SECTION 4A-208—Misdescription of Intermediary Bank or Beneficiary's Bank

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether

the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in Section 4A-302(a)(1).

SECTION 4A-209—Acceptance of Payment Order

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in Section 4A-405(a) or 4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to Section 4A-403(a)(1) or 4A-403(a)(2); or

(3) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within

(i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the

order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to Section 4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

SECTION 4A-210—Rejection of Payment Order

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice

resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to Section 4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

SECTION 4A-211—Cancellation and Amendment of Payment Order

(a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is

received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

SECTION 4A-212—Liability and Duty of Receiving Bank Regarding Unaccepted Payment Order

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in Section 4A-209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

PART 3—EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

SECTION 4A-301—Execution and Execution Date

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

SECTION 4A-302—Obligations of Receiving Bank in Execution of Payment Order

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to Section 4A-209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is simi-

larly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by a means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order

by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

SECTION 4A-303—Erroneous Execution of Payment Order

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under Section 4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under Section 4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders

in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

SECTION 4A-304—Duty of Sender to Report Erroneously Executed Payment Order

If the sender of a payment order that is erroneously executed as stated in Section 4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under Section 4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

SECTION 4A-305—Liability for Late or Improper Execution or Failure to Execute Payment Order

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of Section 4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance

of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

PART 4—PAYMENT

SECTION 4A-401—Payment Date

“Payment date” of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by

the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

SECTION 4A-402—Obligation of Sender to Pay Receiving Bank

(a) This section is subject to Sections 4A-205 and 4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to Section 4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in Sections 4A-204 and 4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in Section 4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an

instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

SECTION 4A-403—Payment by Sender to Receiving Bank

(a) Payment of the sender's obligation under Section 4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer sys-

tem. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under Section 4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under Section 4A-402(b) or 4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

SECTION 4A-404—Obligation of Beneficiary's Bank to Pay and Give Notice to Beneficiary

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reason-

able doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

SECTION 4A-405—Payment by Beneficiary's Bank to Beneficiary

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under Section 4A-404(a) occurs when and to the extent

- (i) the beneficiary is notified of the right to withdraw the credit,
- (ii) the bank lawfully applies the credit to a debt of the beneficiary, or
- (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's

obligation under Section 4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under Section 4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations-multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no

payment by the originator to the beneficiary occurs under Section 4A-406, and (iv) subject to Section 4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under Section 4A-402(c) because the funds transfer has not been completed.

SECTION 4A-406—Payment by Originator to Beneficiary; Discharge of Underlying Obligation

(a) Subject to Sections 4A-211(e), 4A-405(d), and 4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under Section 4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less

charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

PART 5—MISCELLANEOUS PROVISIONS

SECTION 4A-501—Variation by Agreement and Effect of Funds-Transfer System Rule

(a) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in Sections 4A-404(c), 4A-405(d), and 4A-507(c).

SECTION 4A-502—Creditor Process Served on Receiving Bank; Setoff by Beneficiary's Bank

(a) As used in this section, "creditor process"

means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

SECTION 4A-503—Injunction or Restraining Order with Respect to Funds Transfer

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

SECTION 4A-504—Order in Which Items and Payment Orders May Be Charged to Account; Order of Withdrawals from Account

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

SECTION 4A-505—Preclusion of Objection to Debit of Customer's Account

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

SECTION 4A-506—Rate of Interest

(a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

SECTION 4A-507—Choice of Law

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the

law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of

law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.



Statutory Authority for Regulation J

FEDERAL RESERVE ACT

SECTION 13—Powers of Federal Reserve Banks

Any Federal reserve bank may receive from any of its member banks or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation, or other items and also, for collection, maturing notes and bills; or solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district, or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: *Provided*, Such nonmember bank or trust company or other depository institution maintains with the Federal reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve Bank, and other factors as the Board may deem appropriate; *Provided further*, That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank or other depository institution from making reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per \$100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.

[12 USC 342. As amended by act of Sept. 7, 1916 (39 Stat. 752); June 21, 1917 (40 Stat 234); and March 31, 1980 (94 Stat. 139).]

* * * * *

SECTION 16—Note Issues

* * * * *

Every Federal reserve bank shall receive on deposit at par from depository institutions or from Federal Reserve banks checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn upon any of its depositors, and when remitted by a Federal reserve bank, checks and other items, including negotiable orders of withdrawal and share drafts and drafts drawn by any depositor in any other Federal reserve bank or depository institution upon funds to the credit of said depositor in said reserve bank or depository institution. Nothing herein contained shall be construed as prohibiting a depository institution from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons. The Board of Governors of the Federal Reserve System shall, by rule, fix the charges to be collected by the member banks from its patrons whose checks and other items, including negotiable orders of withdrawal and share drafts are cleared through the Federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank.

[12 USC 360. As amended by act of March 31, 1980 (94 Stat. 140).]

The Board of Governors of the Federal Reserve System shall make and promulgate from time to time regulations governing the transfer of funds and charges therefor among Federal reserve banks and their branches, and may at its discretion exercise the functions of a clearing house for such Federal reserve banks, or may designate a Federal reserve bank to exercise such functions, and may also require each

such bank to exercise the functions of a clearing house for depository institutions.

[12 USC 248(o). As amended by act of March 31, 1980 (94 Stat. 140).]

SECTION 11—Powers of Board of Governors of Federal Reserve System

* * * * *

The Board of Governors of the Federal Reserve System shall be authorized and empowered:

* * * * *

(i) To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this Act, and make all rules and regulations necessary to enable said board effectively to perform the same.

[12 USC 248(i).]

* * * * *

SECTION 14—Open Market Operations

* * * * *

Every Federal reserve bank shall have power:

* * * * *

(e) To establish accounts with other Federal reserve banks for exchange purposes and, with the consent or upon the order and direction of the Board of Governors of the Federal Reserve System and under regulations to be prescribed by said board, to open and maintain accounts in foreign countries, appoint correspondents, and establish agencies in such countries wheresoever it may be deemed best for the purpose of purchasing, selling, and collecting bills of exchange, and to buy and sell, with or without its indorsement, through such correspondents or agencies, bills of exchange (or acceptances) arising out of actual

commercial transactions which have not more than ninety days to run, exclusive of days of grace, and which bear the signature of two or more responsible parties, and, with the consent of the Board of Governors of the Federal Reserve System, to open and maintain banking accounts for such foreign correspondents or agencies, or for foreign banks or bankers, or for foreign states as defined in section 25(b) of this Act. Whenever any such account has been opened or agency or correspondent has been appointed by a Federal reserve bank, with the consent of or under the order and direction of the Board of Governors of the Federal Reserve System, any other Federal reserve bank may, with the consent and approval of the Board of Governors of the Federal Reserve System, be permitted to carry on or conduct, through the Federal reserve bank opening such account or appointing such agency or correspondent, any transaction authorized by this section under rules and regulations to be prescribed by the board.

[12 USC 358. As amended by acts of Sept. 7, 1916 (39 Stat. 754); June 21, 1917 (40 Stat. 235); and April 7, 1941 (55 Stat. 131).]

* * * * *

SECTION 25B*—Jurisdiction of Suits

* * * * *

For the purposes of this section, * * * (2) the term "foreign state" includes any foreign government, or any department, district, province, county, possession, or other similar governmental organization or subdivision of a foreign government, and any agency or instrumentality of any such foreign government or of any such organization or subdivision; (3) the term "central bank" includes any foreign bank or banker authorized to perform any one or more of the functions of a central bank; * * *

[12 USC 632. As added by act of April 7, 1941 (55 Stat. 132).]

* Previously designated section 25(b), this section was redesignated by act of Dec. 19, 1991 (105 Stat. 2281).

EXPEDITED FUNDS AVAILABILITY ACT

SECTION 601—Short Title

This title may be cited as the "Expedited Funds Availability Act".

[12 USC 4001 note.]

SECTION 602—Definitions

For purposes of this title—

(1) The term "account" means a demand deposit account or other similar transaction account at a depository institution.

(2) The term "Board" means the Board of Governors of the Federal Reserve System.

(3) The term "business day" means any day other than a Saturday, Sunday, or legal holiday.

(4) The term "cash" means United States coins and currency, including Federal Reserve notes.

(5) The term "cashier's check" means any check which—

- (A) is drawn on a depository institution;
- (B) is signed by an officer or employee of such depository institution; and
- (C) is a direct obligation of such depository institution.

(6) The term "certified check" means any check with respect to which a depository institution certifies that—

- (A) the signature on the check is genuine; and
- (B) such depository institution has set aside funds which—
 - (i) are equal to the amount of the check; and
 - (ii) will be used only to pay such check.

(7) The term "check" means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.

(8) The term "check clearinghouse association" means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using

the check processing facilities of the Federal Reserve System.

(9) The term "check processing region" means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.

(10) The term "consumer account" means any account used primarily for personal, family, or household purposes.

(11) The term "depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board.

(12) The term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act. Such term also includes an office, branch, or agency of a foreign bank located in the United States.

(13) The term "local originating depository institution" means any originating depository institution which is located in the same check processing region as the receiving depository institution.

(14) The term "noncash item" means—

- (A) a check or other demand item to which a passbook, certificate, or other document is attached;
- (B) a check or other demand item which is accompanied by special instructions, such as a request for special advise of payment or dishonor; or
- (C) any similar item which is otherwise classified as a noncash item in regulations of the Board.

(15) The term "nonlocal originating depository institution" means any originating depository institution which is not a local depository institution.

(16) The term "proprietary ATM" means an automated teller machine which is—

- (A) located—
 - (i) at or adjacent to a branch of the receiving depository institution; or
 - (ii) in close proximity, as defined by the Board, to a branch of the receiving depository institution; or
- (B) owned by, operated exclusively for, or operated by the receiving depository institution.

(17) The term "originating depository insti-

tion" means the branch of a depository institution on which a check is drawn.

(18) The term "nonproprietary ATM" means an automated teller machine which is not a proprietary ATM.

(19) The term "participant" means a depository institution which—

(A) is located in the same geographic area as that served by a check clearinghouse association; and

(B) exchanges checks through the check clearinghouse association, either directly or through an intermediary.

(20) The term "receiving depository institution" means the branch of a depository institution or the proprietary ATM in which a check is first deposited.

(21) The term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

(22) The term "teller's check" means any check issued by a depository institution and drawn on another depository institution.

(23) The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(24) The term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

(25) The term "wire transfer" has such meaning as the Board shall prescribe by regulations.

[12 USC 4001.]

SECTION 603—Expedited Funds Availability Schedules

(a) *Next business day availability for certain deposits.*

(1) Except as provided in subsection (e) and in section 604, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution,

such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

(i) is drawn on the Treasury of the United States; and

(ii) is endorsed only by the person to whom it was issued;

(B) a check which—

(i) is drawn by a State;

(ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and

(iv) is endorsed only by the person to whom it was issued;

(C) a check which—

(i) is drawn by a unit of general local government;

(ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;

(iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and

(iv) is endorsed only by the person to whom it was issued;

(D) the first \$100 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

(i) is deposited in a receiving depository

- tory institution which is staffed by individuals employed by such institution;
- (ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and
 - (iii) is endorsed only by the person to whom it was issued.

(b) *Permanent schedule.*

(1) Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which the funds involved are available for withdrawal.

(2) Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) (A) Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become

available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D).

(4) This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) *Temporary schedule.*

(1) (A) Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(B) (i) Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearinghouse association as the receiving depository institution (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D).

(2) Subject to subsections (a)(2), (d), and (e) of this section and section 604, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4).

(d) *Time period adjustments.*

(1) Notwithstanding any other provision of law, the Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) *Deposits at an ATM.*

(1) (A) Not more than 4 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business

day on which funds from such deposit are available for withdrawal.

(B) A deposit is described in this subparagraph if it is—

(i) a cash deposit;

(ii) a deposit made by a check described in subsection (a)(2);

(iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2)); or

(iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2)).

(2) The provisions of subsections (a), (b), and (c) shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(3) The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after the date of the enactment of this title, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) *Check return; notice of nonpayment.* No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

(1) such checks be physically returned to such depository institution; or

(2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) or in the regulations issued under any such subsection.

[12 USC 4002. As amended by acts of Nov. 28, 1990 (104 Stat. 4424) and Dec. 19, 1991 (105 Stat. 2307).]

SECTION 604—Safeguard Exceptions

(a) *New accounts.* Notwithstanding section

603, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period (or such shorter period as the Board may establish) beginning on the date such account is established—

(1) Except as provided in paragraph (3), in the case of—

- (A) any cash deposited in such account;
- (B) any funds received by such depository institution by wire transfer for deposit in such account;
- (C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and
- (D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 603(a)(2),

such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(2) In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 603(b), 603(c), or paragraph (1) of section 603(e).

(3) In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds \$5,000—

- (A) paragraph (1) shall apply only with respect to the first \$5,000 of such aggregate amount; and
- (B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) *Large or redeposited checks; repeated overdrafts.* The Board may, by regulation, establish reasonable exceptions to any time limi-

tation established under subsection (a)(2), (b), (c), or (e) of section 603 for—

- (1) the amount of deposits by one or more checks that exceeds the amount of \$5,000 in any one day;
- (2) checks that have been returned unpaid and redeposited; and
- (3) deposit accounts which have been overdrawn repeatedly.

(c) *Reasonable cause exception.*

(1) In accordance with regulations which the Board shall prescribe, subsections (a)(2), (b), (c), and (e) of section 603 shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

(2) No determination under this subsection may be based on any class of checks or persons.

(3) If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

- (A) the depositor was not provided with the written notice required under subsection (f) (with respect to such determination) at the time the deposit was made;
- (B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and
- (C) the amount of the check is collected from the originating depository institution.

(4) Each agency referred to in section 610(a) shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the pur-

pose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) as a result of the application of this subsection.

(d) *Emergency conditions.* Subject to such regulations as the Board may prescribe, subsections (a)(2), (b), (c), and (e) of section 603 shall not apply to funds deposited by check in any receiving depository institution in the case of—

- (1) any interruption of communication facilities;
- (2) suspension of payments by another depository institution;
- (3) any war; or
- (4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(e) *Prevention of fraud losses.*

(1) The Board may, by regulation or order, suspend the applicability of this title, or any portion thereof, to any classification of checks if the Board determines that—

- (A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and
- (B) suspension of this title, or such portion of this title, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) (A) Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) Each report under subparagraph (A) shall contain—

- (i) the specific reason for prescribing the regulation or issuing the order;

(ii) evidence considered by the Board in making the determination under paragraph (1) with respect to such regulation or order; and

(iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) *Notice of exception; availability within reasonable time.*

(1) If any exception contained in this section (other than subsection (a)) applies with respect to funds deposited in an account at a depository institution—

(A) the depository institution shall provide notice in the manner provided in paragraph (2) of—

(i) the time period within which the funds shall be made available for withdrawal; and

(ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this title, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board.

(2) The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board.

(D) In the case of a deposit to which

subsection (b)(1) or (b)(2) applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

(E) In the case of a deposit to which subsection (b)(3) applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.

(3) If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution.

[12 USC 4003. As amended by act of Dec. 19, 1991 (105 Stat. 2307).]

SECTION 605—Disclosure of Funds Availability Policies

(a) *Notice for new accounts.* Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) *Preprinted deposit slips.* All preprinted deposit slips that a depository institution furnishes to its customers shall contain a summary notice, as prescribed by the Board in regulations, that deposited items may not be available for immediate withdrawal.

(c) *Mailing of notice.*

(1) In the first regularly scheduled mailing to customers occurring after the effective

date of this section, but not more than 60 days after such effective date, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before such effective date.

(2) A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

(3) Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into a customer's account.

(d) *Posting of notice.*

(1) Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) *Notice of interest payment policy.* If a depository institution described in section 606(b) begins the accrual of interest or dividends at a later date than the date described in section 606(a) with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a)

and (c) shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) *Model disclosure forms.*

(1) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

(A) uses any appropriate model form or clause as published by the Board, or

(B) uses any such model form or clause and changes such form or clause by—

(i) deleting any information which is not required by this title; or

(ii) rearranging the format.

(3) Nothing in this title requires the use of any such model form or clause prescribed by the Board under this subsection.

(4) Model disclosure forms and clauses shall be adopted by the Board only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

[12 USC 4004.]

SECTION 606—Payment of Interest

(a) *In general.* Except as provided in subsection (b) or (c) and notwithstanding any other provision of law, interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.

(b) *Special rule for credit unions.* Subsection (a) shall not apply to an account at a depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act if the depository institution—

(1) begins the accrual of interest or dividends at a later date than the date described in subsection (a) with respect to all funds,

including cash, deposited in such account; and

(2) provides notice of the interest payment policy in the manner required under section 605(e).

(c) *Exception for checks returned unpaid.* No provision of this title shall be construed as requiring the payment of interest or dividends on funds deposited by a check which is returned unpaid.

[12 USC 4005.]

SECTION 607—Miscellaneous Provisions

(a) *After-hours deposits.* For purposes of this title, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.

(b) *Availability at start of business day.* Except as provided in subsections (b)(3) and (c)(1)(B) of section 603, if any provision of this title requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

(c) *Effect on policies of depository institutions.* No provision of this title shall be construed as—

(1) prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this title; or

(2) affecting a depository institution's right—

(A) to accept or reject a check for deposit;

(B) to revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;

(C) to charge back the depositor's account for the amount of such check; or

(D) to claim a refund of such provisional credit.

(d) *Prohibition on freezing certain funds in an account.* In any case in which a check is

deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this title, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to this title) solely because the funds so deposited are not yet available for withdrawal.

(e) *Employee training on and compliance with the requirements of this title.* Each depository institution shall—

- (1) take such actions as may be necessary fully to inform each employee (who performs duties subject to the requirements of this title) of the requirements of this title; and
- (2) establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

[12 USC 4006.]

SECTION 608—Effect on State Law

(a) *In general.* Any law or regulation of any State in effect on September 1, 1989, which requires that funds deposited or received for deposit in an account at a depository institution chartered by such State be made available for withdrawal in a shorter period of time than the period of time provided in this title or in regulations prescribed by the Board under this title (as in effect on September 1, 1989) shall—

- (1) supersede the provisions of this title and any regulations by the Board to the extent such provisions relate to the time by which funds deposited or received for deposit in an account shall be available for withdrawal; and
- (2) apply to all federally insured depository institutions located within such State.

(b) *Override of certain state laws.* Except as provided in subsection (a), this title and regulations prescribed under this title shall supersede any provision of the law of any State, including the Uniform Commercial Code as in effect in such State, which is inconsistent with this title or such regulations.

[12 USC 4007.]

SECTION 609—Regulations and Reports by Board

(a) *In general.* After notice and opportunity to submit comment in accordance with section 553(c) of title 5, United States Code, the Board shall prescribe regulations—

- (1) to carry out the provisions of this title;
- (2) to prevent the circumvention or evasion of such provisions; and
- (3) to facilitate compliance with such provisions.

(b) *Regulation relating to improvement of check processing system.* In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

- (1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;
- (2) the Federal Reserve banks and depository institutions provide for check truncation;
- (3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;
- (4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks;
- (5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

- (i) automate the process of reading endorsements; and
- (ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determines whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institu-

tion directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f), that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(c) *Regulatory responsibility of Board for payment system.*

(1) In order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(d) *Reports.*

(1) (A) The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after the date of the enactment of this title.

(B) Each such report shall describe—

(i) the actions taken and progress made by the Board to implement the schedules established in section 603, and

(ii) the impact of this title on consumers and depository institutions.

(2) (A) The Board shall transmit a report to both Houses of the Congress not later than 2 years after the date of the enactment of this title regarding the effects the

temporary schedule established under section 603(c) have had on depository institutions and the public.

(B) Such report shall also assess the potential impact the implementation of the schedule established in section 603(b) will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

(3) Not later than 6 months after section 603(b) takes effect, the Comptroller General of the United States shall transmit a report to the Congress evaluating the implementation and administration of this title.

(e) *Consultation.* In prescribing regulations under subsections (a) and (b), the Board shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

(f) *Electronic clearinghouse study.*

(1) The Board shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

(2) In connection with the study required under paragraph (1), the Board shall—

(A) consult with appropriate experts in telecommunications technology; and

(B) consider all practical and legal impediments to the development of an electronic clearinghouse process.

(3) The Board shall report its conclusions to the Congress within 9 months of the date of the enactment of this title.

SECTION 610—Administrative Enforcement

(a) *Administrative enforcement.* Compliance with the requirements imposed under this title, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this title, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) *Additional powers.*

(1) For purposes of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall

be deemed to be a violation of a requirement imposed under that Act.

(2) In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) *Enforcement by the Board.*

(1) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

(2) If the Board determines that—

(A) any depository institution which is not a depository institution described in subsection (a), or

(B) any other person subject to the authority of the Board under this title, including any person subject to the authority of the Board under section 605(d)(2) or 609(c),

has failed to comply with any requirement imposed by this title or by the Board under this title, the Board may issue an order prohibiting any depository institution, any Federal Reserve bank, or any other person subject to the authority of the Board from engaging in any activity or transaction which directly or indirectly involves such noncomplying depository institution or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks and any related function of the payment system with respect to checks).

(d) *Procedural rules.* The authority of the Board to prescribe regulations under this title does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this title.

[12 USC 4009. As amended by acts of Aug. 9, 1989 (103 Stat. 438) and Dec. 19, 1991 (105 Stat. 2303).]

SECTION 611—Civil Liability

(a) *Civil liability.* Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this title or any regulation prescribed under this title with respect to any person other than another depository institution is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2) (A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of \$500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) *Class action awards.* In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

(c) *Bona fide errors.*

(1) A depository institution may not be

held liable in any action brought under this section for a violation of this title if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this title is not a bona fide error.

(d) *Jurisdiction.* Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) *Reliance on Board rulings.* No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) *Authority to establish rules regarding losses and liability among depository institutions.* The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

[12 USC 4010.]

SECTION 612—Parity in Clearing

(a) *In general.* Section 11A of the Federal Reserve Act (12 U.S.C. 248a) is amended by adding at the end thereof the following:

“(e) All depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)), may receive for deposit and as deposits any evidences of transaction accounts, as defined by section 19(b)(1) (12 U.S.C. 461(b)(1)) from other depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)) or from any office of any Federal Reserve bank without regard to any Federal or State law restricting the number or the physical location or locations of such depository institutions.”.

(b) *Effective date.* The amendment made by subsection (a) shall take effect on the date of enactment of this title.

[12 USC 248a note.]

SECTION 613—Effective Dates

(a) Except as provided in subsection (b), this title shall take effect on the date of the enactment of this title.

(b) Sections 603, 604, 605, 606, 610, and 611 shall take effect on September 1, 1988.

[12 USC 4001 note.]

BRETTON WOODS AGREEMENTS ACT**SECTION 6—Federal Reserve Banks as Depositories**

Any Federal Reserve bank which is requested to do so by the Fund or the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 286d.]

INTER-AMERICAN DEVELOPMENT BANK ACT**SECTION 6—Federal Reserve Banks as Depositories**

Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 283d.]

INTERNATIONAL DEVELOPMENT ASSOCIATION ACT**SECTION 6—Federal Reserve Banks as Depositories**

Any Federal Reserve bank which is requested to do so by the Association shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 284d.]

INTERNATIONAL FINANCE CORPORATION ACT**SECTION 6—Federal Reserve Banks as Depositories**

Any Federal Reserve bank which is requested to do so by the Corporation shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 282d.]

ASIAN DEVELOPMENT BANK ACT**SECTION 6—Federal Reserve Banks as Depositories**

Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository

tory or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 285d.]

AFRICAN DEVELOPMENT FUND ACT

SECTION 207—Federal Reserve Banks as Depository for the Fund

Any Federal Reserve bank which is requested to do so by the President shall act as a depository for the Fund, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 290g-5.]

AFRICAN DEVELOPMENT BANK ACT

SECTION 1337—Federal Reserve Banks as Depositories

Any Federal Reserve bank which is requested to do so by the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

[22 USC 290i-5.]