

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 9394]
[November 4, 1982]

**AGREEMENT TO PERMIT INTRADAY OVERDRAFTS
BASED ON PLEDGED ASSETS**

New Operating Circular — No. 7B

*To All Edge and Agreement Corporations,
and Branches and Agencies of Foreign Banks,
in the Second Federal Reserve District:*

In this Bank's Circular No. 9371, dated September 30, 1982, we announced a policy that would permit an Edge or Agreement corporation, or a branch or agency of a foreign bank, to overdraw its account at this Bank during the day, up to a prearranged limit, resulting from its transfers of funds over FEDWIRE. This new flexibility will be available to each such institution to the extent that it secures its prearranged limit with collateral acceptable to this Bank and has arrangements in place to control the extension of intraday credit to its own customers.

The enclosed Operating Circular No. 7B sets forth the specific terms of agreement between this Bank and the institutions that elect to take advantage of this policy. In particular, it describes the nature, limit, and repayment requirements regarding the intraday indebtedness that will be permissible under this arrangement. In addition, it describes the requirement to assign and pledge assets to this Bank as security for repayment of all such indebtedness.

If your institution is interested in entering into this arrangement, you should submit a letter of agreement to this Bank in the form attached as Exhibit I to Operating Circular No. 7B, together with a certified copy of a corporate resolution (if not previously submitted for purposes of advances at the discount window) in the form of Exhibit II to that operating circular. In addition, we ask that you submit a description of your internal procedures for controlling the extension of intraday credit to your customers. Upon receipt of this material, we will contact you to establish the specific intraday overdraft limit for your institution and make arrangements for the receipt of your pledged assets and final acceptance of your letter of agreement.

If you have any questions regarding Operating Circular No. 7B or the associated policy and procedures, please call John M. Eighmy, Assistant Vice President, Accounting Function (Tel. No. 212-791-7766), Donald R. Anderson, Manager, Accounting Department (Tel. No. 212-791-5228), or Kathleen A. O'Neil, Manager, Accounting Department (Tel. No. 212-791-7768).

ANTHONY M. SOLOMON,
President.

**FEDERAL RESERVE BANK
OF NEW YORK**

[**Operating Circular No. 7B**]
November 4, 1982

**AGREEMENT REGARDING INTRADAY
OVERDRAFTS IN CONNECTION WITH WIRE
TRANSFERS OF FUNDS OVER FEDWIRE**

*To All Edge and Agreement Corporations,
and Branches and Agencies of Foreign Banks,
in the Second Federal Reserve District:*

This operating circular sets forth the terms of the agreement ("Agreement") between this Bank and an Edge or Agreement corporation with a head office or branch, a foreign bank with a branch or agency, or a depository institution designated by this Bank, in the Second Federal Reserve District, that is a depositor of this Bank ("Institution") and governs whenever, during the Bank's business day, the Institution fails to maintain a balance of funds in its deposit account ("Account") on this Bank's books sufficient at all times to cover the amounts of transfer items, transfer requests, or other debits charged to that Account.

Terms of agreement

1. In order for an Institution to overdraw its Account during the Bank's business day in connection with a wire transfer of funds over FEDWIRE, it must (1) execute and deliver to the Bank a letter in the form attached as Exhibit I, along with a certified copy of corporate resolutions substantially in the form attached as Exhibit II,* (2) pledge collateral acceptable to the Bank ("Pledged Assets") as provided in Paragraph 4 of this Agreement to secure such an overdraft, and (3) submit a description of the arrangements that the Institution has in place to ensure adequate control over drawings on uncollected funds made by and intraday overdrafts incurred by its customers. This Agreement becomes effective when the Bank accepts the Institution's letter of agreement.

*A foreign bank need not submit a corporate resolution if it has submitted to the Bank acceptable resolutions and opinions of counsel, as set forth in Exhibits II-IV of Appendix B of the Bank's Operating Circular No. 12.

[Enc. Cir. No. 9394]

2. If, as a result of one or more transfer items, transfer requests, or other debits, the Institution's Account or its net collected funds position is overdrawn at any time during the Bank's business day, the Institution shall be indebted to the Bank to the extent of the overdraft ("Indebtedness").

3. This Bank establishes for each Institution an aggregate maximum amount ("Ceiling") up to which that Institution may incur Indebtedness. The Institution will be informed of its initial Ceiling when this Bank accepts the Institution's letter of agreement. In establishing or changing the Ceiling, we will consider an Institution's asset position, capital, overall financial condition, available collateral, and likely volume of wire transfers of funds. We reserve the right to change an Institution's Ceiling at any time upon notice and will endeavor to give prior notice of such changes if conditions permit.

4. Prior to incurring an Indebtedness, the Institution shall deposit with the Bank acceptable Pledged Assets in an amount, established and calculated by the Bank, at least equal to the Institution's Ceiling. The Institution grants the Bank a security interest in, and assigns and pledges to the Bank, the Pledged Assets and any proceeds of the Pledged Assets, as security for repayment to the Bank of each Indebtedness and any interest thereon as provided in Paragraph 6. Upon the request of the Bank, the Institution shall, on the day requested, substitute collateral or pledge such additional collateral as the Bank may deem necessary for its protection. In addition, with the Bank's prior consent, the Institution may substitute acceptable collateral for existing Pledged Assets. Questions regarding the acceptability of different types of collateral to serve as Pledged Assets should be directed at our Head Office to the Discount Division (Tel. No. 212-791-5394 or 5395), and at our Buffalo Branch to the Collection, Loans, and Fiscal Agency Division (Tel. No. 716-849-5043).

5. The Institution warrants as of the time of the pledge to the Bank of each Pledged Asset that, except as provided in this Agreement, it has not assigned and thereafter will not assign or otherwise transfer any interest in, create, or suffer the creation of any lien against, any Pledged Asset without the Bank's prior written approval. The Institution also warrants that it is authorized under its charter and bylaws or similar chartering documents and is authorized under the laws of its chartering authority to incur Indebtedness and to pledge the Pledged Assets to the Bank and that the grant to the Bank of the

security interest created by this Agreement does not and will not violate the terms of any lien or pledge agreement, any other agreement, or applicable law. The Institution shall not perform any act with respect to the Pledged Assets that would impair the Bank's rights thereto nor shall it fail to perform any act that would prevent such impairment. The Pledged Assets assigned or pledged to the Bank must be endorsed or assigned to the Bank with recourse, and the Institution hereby waives presentment, demand, notice of dishonor, protest, notice of protest, and all other notices relating to the Pledged Assets.

6. If the Institution is a foreign bank or a depository institution and the Bank is willing to make the advance, the Institution may repay an Indebtedness by means of an advance from the Bank. If the Indebtedness is converted, entirely or in part, by such an advance, the Indebtedness and advance shall be regarded as a single extension of credit and shall be governed by the Bank's Operating Circular No. 12 and its relevant Appendices. If an Institution does not repay or convert an Indebtedness in full on the business day the Indebtedness is incurred, the overdraft will be subject to penalties as provided in this Bank's Circular No. 9169, dated October 23, 1981.

7. Unless the Bank grants a waiver in writing, an Indebtedness becomes due and payable at any time (1) upon demand and notice from the Bank or (2) without demand or notice, upon (a) the failure to pay or convert the entire Indebtedness by the final close of the Bank's wire transfer of funds service on the day the Indebtedness is incurred, (b) the insolvency of, or the appointment of a receiver, custodian, or the like for, the Institution, (c) the suspension or closing of the Institution (other than a voluntary routine relocation or closing of an office) or the taking of possession of its business (including the business of any of its branches or agencies) by any governmental authority or receiver, custodian, or the like, or (d) the whole or partial purchase, acquisition, merger, or other takeover of the Institution by any other depository institution, including any foreign bank, or any other corporation, government, governmental subdivision or agency, partnership, business trust or any other trust, cooperative, association, or similar organization. If any event specified in (2)(b), (c), or (d) occurs, then thereafter, unless the Bank waives interest, interest shall be due and payable on the Indebtedness at a rate five percentage points higher than the discount rate for short-term adjustment credit as specified in this Bank's Operating Circular No. 13, as established from time to time.

8. Upon the happening of any event described in Paragraph 7 or upon the failure of the Institution to comply with a request by the Bank for the provision of substitute or additional Pledged Assets within the same calendar day as the Bank's request, the Bank may elect to exercise its rights as a secured creditor, including the right to sell all or part of the Pledged Assets at public or private sale, without demand upon or notice to the Institution (except such notice as may be required by applicable statute and may not be waived), and to become the purchaser of the whole or any part of the Pledged Assets, free from any right or equity of redemption and from all other claims to the extent permitted by governing law. The Institution hereby appoints the Bank or its assigns as its attorney-in-fact and authorizes the Bank to conduct the sale, give such notices, and execute such documents as are necessary to convey good title to the Pledged Assets to any purchaser. This power of attorney is coupled with an interest, and full power of substitution is granted to the assignee or holder. After deduction of all expenses, the Bank may apply the proceeds of the Pledged Assets to the payment of the Indebtedness and all other liabilities of the Institution to the Bank, including interest on the Indebtedness, and any surplus then remaining will be paid to the Institution.

9. The failure of the Bank to insist upon a strict performance of any of the terms stated in this Agreement or to seek to enforce the Bank's rights or remedies upon the happening of any event described in Paragraph 7 shall not be deemed a waiver of any rights or remedies that the Bank may have and shall not be deemed a waiver of any subsequent breach or default in the terms of this Agreement.

10. Except as otherwise provided by regulation, operating circular, or written agreement, this Bank shall be liable in connection with any action taken or omission by it only for its failure to exercise ordinary care.

11. This Agreement shall be construed in accordance with and governed by Federal law, and the law of the State of New York to the extent that such State law is not inconsistent with Federal law. Other terms regarding the operation of an Institution's Account may be contained in regulations of the Board of Governors of the Federal Reserve System, this Bank's operating circulars, or any written agreement entered into between the Institution and this Bank. This Agreement constitutes a security agreement if such an agreement is required under applicable law.

12. This Bank reserves the right to amend this operating circular at any time but will endeavor to give 14 calendar days' prior written notice of any amendments. Any amendment applies to all Indebtedness arising after the effective date of the amendment.

13. This Agreement supersedes any prior agreement with this Bank regarding the Indebtedness.

ANTHONY M. SOLOMON,
President.

EXHIBIT I
LETTER OF AGREEMENT

[Letterhead of Institution]

[Date]

[Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045
Attention: Discount Division]

or

[Buffalo Branch
Federal Reserve Bank of New York
160 Delaware Avenue
P.O. Box 961
Buffalo, New York 14240
Attention: Collection, Loans, and
Fiscal Agency Divison]

Gentlemen:

In order to be able to overdraw our account on your books during your business day by reason of wire transfers of funds, we agree to the provisions of your Operating Circular No. 7B, as revised from time to time. [We have already on file with you] or [Enclosed are] resolutions authorizing our institution to borrow from and pledge assets to you.

.....
Name of Institution

By:
Authorized signature(s)

.....
Title

EXHIBIT II

RESOLUTIONS AUTHORIZING A DEPOSITORY INSTITUTION TO INCUR INDEBTEDNESS TO AND TO PLEDGE ASSETS TO THE FEDERAL RESERVE BANK OF NEW YORK

I hereby certify that the following resolutions were duly adopted
at a meeting of the
Type of governing body, e.g., board of directors
..... of the
Official name of institution
(the "Institution"), duly authorized and existing under the laws
of....., which meeting was duly called and held
on the day of, 19.., and that those reso-
lutions are now in full force and effect and are not in conflict with
any provisions in the certificate of incorporation, statutes, or bylaws
of the Institution.

1. RESOLVED, that whenever, during the business day of the
Federal Reserve Bank of New York ("Reserve Bank"), the Institution
fails to maintain a balance of funds in its account on the books of
the Reserve Bank sufficient to cover the amounts of transfer items,
transfer requests, or other debits charged to that deposit account, the
Institution shall be indebteded to the Reserve Bank to the extent
that the balance of such account is negative, and that the Institution
hereby is authorized to incur any indebtedness and to pledge its
assets to the Reserve Bank to secure any indebtedness.

2. RESOLVED, that
Indicate by title authorized officers
of the Institution, and their successors in the office be, and any
..... of them hereby is/are
Indicate whether one, or two, etc.
authorized, to transmit to the Reserve Bank the signatures of individ-
uals who shall be authorized to issue instructions in the name and on
behalf of the Institution and, from time to time:

A. To incur any indebtedness to the Reserve Bank upon
such terms and security as the Reserve Bank may require; and

B. To endorse, assign, deposit, and pledge as collateral security (including any collateral security pledged pursuant to any third-party custody arrangement and the authorization to appoint any custodian or to act as custodian in connection with such arrangements) any property of this Institution now or hereafter acquired, for the payment or performance of any liability or obligation of the Institution to the Reserve Bank resulting from such indebtedness; and

C. To do any acts that may be necessary or incidental to any transaction authorized by this resolution or that may be designed or intended to carry out the purposes of this resolution.

3. RESOLVED, that these resolutions and all the powers and authorizations hereby granted or confirmed shall continue in full force and effect until written notice of their revocation shall have been given to and received by the Reserve Bank; and that a duly certified copy of these resolutions, with the seal of this Institution attached, be furnished to the Reserve Bank.

* * *

I, the undersigned, (Cashier/Comptroller/Secretary)* of the Institution, do hereby certify that the foregoing resolutions are true and correct copies of resolutions of the

Governing body,

..... of the Institution duly adopted

e.g., board of directors or trustees

in accordance with and as authorized by its charter and bylaws at a meeting of said board duly called and held on, 19.., at which meeting a quorum of all of the

directors or trustees

was present and acting throughout, and that those resolutions have not been rescinded or modified and are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Institution.

Dated:, 19..

.....
Cashier/Comptroller/Secretary

[CORPORATE SEAL]

* The official designated shall be the cashier or comptroller or secretary of the Institution or another officer of similar or higher rank. The official certifying these resolutions shall have the authority to certify the statements in this document and shall not be designated under paragraph 2.