FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. **9670**
April 12, 1984]

Accounting for Fees on International Loans

To All State Member Banks, Edge and Agreement Corporations, and
Bank Holding Companies in the Second Federal Reserve District:

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has announced adoption of rules to establish uniform requirements for accounting for fees on international loans. The rules implement a part of the International Lending Supervision Act of 1983.

The other Federal banking regulators — Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency — have issued similar regulations for institutions they supervise, as one facet of a joint program under the Act to strengthen the supervision and regulation of foreign lending by United States banking organizations. The Board's rules apply to state-chartered banks that are members of the Federal Reserve System and to bank holding companies and Edge and Agreement corporations engaged in banking. Nonmember banks and national banks are covered by the rules of the other agencies.

The rules as adopted by the three agencies are effective June 30, 1984, except for those dealing with restructured international loans, which are effective immediately.

The rules deal with:

— Section 906(a) of the Act, which prohibits a banking institution from charging any fee in connection with a restructuring of an international loan that exceeds the administrative cost of the restructuring, and

— Section 906(b) which provides that the agencies shall establish rules for accounting for other fees charged in connection with international loans to ensure that appropriate portions are accrued into income over the life of the loan.

The Board adopted its rules in final form after consideration of comment received on proposals published in February. The final rules incorporate significant changes based on the comment received. The principal provisions of the fee accounting rules as adopted are:

1. The proposed rules did not differentiate among types of international loans. In light of the comment received and the legislative history of the Act, the final rules distinguish between restructured and all other international loans in establishing accounting treatment for fees.

2. A "restructured international loan" is defined as a loan that meets the following criteria:

— the borrower cannot service an existing loan and is a resident of a foreign country experiencing a generalized inability to service external debt due to lack of foreign exchange in the country; and either

— the loan terms are amended to reduce stated interest or extend the schedule of payments; or

— a new loan is made to or for the benefit of the borrower enabling the borrower to service or refinance the existing debt.

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3. No banking institution may charge any fee in connection with a restructured international loan unless the portion of the fee exceeding administrative costs is deferred and amortized over the effective life of the loan.

4. Administrative costs are defined to include only specifically identified direct costs. Supervisory and administrative expenses or other indirect expenses such as occupancy may not be included.

5. In an international syndicated loan, a banking institution may not take into income immediately that portion of a syndication fee that represents an interest yield adjustment but must recognize the yield adjustment over the life of the loan. For the managing banks of an international syndicated loan the final rule adopts a presumption that the yield adjustment portion of the fee is at least equal to the largest fee received by a non-managing loan participant on a pro rata basis.

6. The remainder of any fee received by a managing bank in an international syndicated loan may be taken into income immediately only if the bank can identify and document the services for which it received the fee. Such documentation would at a minimum include the loan agreement signed by all parties to the loan.

7. Commitment fees may be taken into income over the commitment period. Commitment fees must be recognized as income over the combined commitment and loan period only where it is not practicable to identify that portion of the fee related to making the commitment as compared with any portion related to lending funds.

Enclosed is a copy of amendments to the Board's Regulation K, "International Banking Operations," reflecting these actions, together with the joint notice on this matter by the Federal banking regulators. Questions thereon may be directed to Donald E. Schmid, Manager, Bank Analysis Department (Tel. No. 212-791-6611).

ANTHONY M. SOLOMON,
President.

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Board of Governors of the Federal Reserve System

INTERNATIONAL BANKING OPERATIONS

AMENDMENTS TO REGULATION K

Effective June 30, 1984, and March 29, 1984 (see below)

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 20

FEDERAL RESERVE SYSTEM

12 CFR Part 211

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 351

Accounting for International Loan Fees

AGENCIES: Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation.

ACTION: Joint notice of final rules.

SUMMARY: These regulations establish uniform requirements for the accounting for fees associated with the restructuring of international lending arrangements and nonrefundable fees charged by banking institutions in connection with other international loans. These regulations implement one aspect of the joint program of the Federal banking agencies to strengthen the supervisory and regulatory framework relating to foreign lending by U.S. banking institutions, incorporated in section 906 of the International Lending Supervision Act of 1983.

EFFECTIVE DATES: The effective date of the regulations is June 30, 1984, except for §§ 20.9(a), 211.45(a) and 351.2(b) which are effective March 29, 1984.

FOR FURTHER INFORMATION CONTACT:

Comptroller of the Currency: Zane D. Blackburn, Director, Bank Accounting or Eugene Green, Senior Accountant, Bank Accounting (202/447–0471); Harold Schuler, Director, International Relations & Financial Evaluation (202/447–1747); Dorothy Sable, Senior Attorney (202/447–1880).

Federal Reserve System: Michael G. Martinson, Projects Manager, International Activities, Division of Banking Supervision and Regulation (202/452–3621); or Stanley C. Weidman, Senior Accountant-Analyst, Division of Banking Supervision and Regulation (202/452–3502); or Nancy P. Jacklin, Assistant General Counsel (202/452–3428); Kathleen O'Day, Senior Counsel Legal Division (202/452–3786).

Federal Deposit Insurance Corporation: Paul L. Sachtleben, Planning and Program Development Branch, Division of Bank Supervision (202/389–4761) or Peter M. Kravitz, Senior Attorney, Legal Division (202/389–4171).

SUPPLEMENTARY INFORMATION: On February 13, 1984, the agencies published for comment regulations to implement section 906 of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq., 3905) ("Act"). The proposed regulations set forth the accounting for various fees received by banking institutions when making international loans.

The agencies received 67 letters of comment on the proposed regulations as follows: The Board received 32 comments; 6 from trade or professional associations, 17 from banks and bank holding companies, 3 from accounting firms and 6 from Federal Reserve banks; the Comptroller of the Currency received 21 comments; 13 from national banks, 4 from trade or professional associations or firms and 4 from accounting firms or groups; and the Federal Deposit Insurance Corporation received 14 comments which were duplicative of those received by the other agencies.

In the explanatory materials accompanying the proposed regulations, the agencies specifically requested comments on: (1) Whether the rules should differentiate between fees related to restructured loans and other international loans, and if so, how restructured loans should be defined; (2) whether all or certain costs should be capitalized rather than expensed as incurred; (3) whether commitment fees should be deferred and recognized over the combined commitment and expected loan period as adjustments to yield; (4) how banking institutions should account for the costs of, and fee income attributable to, their merchant banking

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For this Regulation to be complete retain:

1) Regulation K pamphlet, as amended effective July 8, 1983.
2) Amendments effective December 20, 1983, and February 13, 1984.
3) This slip sheet.

[Enc. Cir. No. 9670]

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activities; and (5) whether any aspects of the proposed rules were inconsistent with the accounting treatment for domestic loans. Those submitting comments addressed these and other issues. In light of the comments received, the agencies have made several revisions to improve the proposed regulations. Following are the major topics raised in the comments and the agencies' responses thereto:

(1) Scope of the Rules

Many commenters objected to the issuance of rules on the treatment of international loan fees other than fees received in connection with restructured international loans. They argued that Congress only intended the agencies to address restructured loan fees. However, the agencies believe that Section 906 and its legislative history clearly require the agencies to issue rules addressing fees on both types of international loans. Section 906(a) is directed to restructured loans and authorizes the agencies to issue necessary implementing rules. Section 906(b) is directed to all international loans and requires the agencies, subject to the specific requirements for restructured loan fees, to issue rules governing the treatment of all international loan fees.

Most commenters, including the Banking Committee of the American Institute of Certified Public Accountants (AICPA), urged the agencies not to establish accounting rules now that differ significantly from Generally Accepted Accounting Principles (GAAP), especially in view of the current status of consideration by the accounting profession of issues of fee accounting. Accordingly, several commenters urged the agencies to adopt accounting rules for fees on restructured loans as specified in section 906(a) but to adopt current GAAP rules for all other fee accounting for international loans, thereby leaving the resolution of these issues to the accounting profession.

The suggestion that Congress was solely concerned that the Federal banking agencies promulgate regulations for fees on restructured loans and that GAAP should otherwise apply, would make superfluous the legislative requirements in section 906(b). To the contrary, the Federal banking agencies in proposing to Congress the provisions now contained in section 906(b), and Congress in adopting those provisions, considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting practices in this area. Further, Congress determined that more appropriate accounting rules were necessary in order to avoid artificial incentives for banking institutions to make international loans.

In connection with this issue, several commenters requested that implementation of rules on fees other than those received in a restructuring be delayed until final decisions are reached by the Financial Accounting Standards Board (FASB). The FASB has scheduled the issue of accounting for nonrefundable loan fees for its current agenda. The FASB itself, although not commenting specifically on the proposal, noted that it will address this issue through its "due process" procedures and will keep the agencies informed of developments. The agencies do no believe that delaying the rules to an idefinite date would be in accordance with the intention of Congress. However, in order to allow reasonable time for adjustment of accounting methods, the rules are effective June 30, 1984, except for the rules on fees for restructured loans which are effective immediately. Finally, in recognition of the current consideration of these issues by the accounting profession, the agencies intend to reexamine their regulations to assess the need for modification in the event the FASB issues a final pronouncement or standard on loan fees.

(2) Accounting Rules Related to Restructured Loans and Other International Loans

The proposed regulations did not differentiate between restructured and all other international loans. Uniform accounting rules were specified for commitment an agency fees, and the rules required that any other fee received in connection with an international loan in excess of adminisrative costs be deferred and amortized over the effective life of the loan. The reason given for such a requirement was that the fees on restructured international loans and all other international loans are similar in substance and therefore should be treated in the same manner. In addition, it would be burdensome to distinguish between restructurings and other international loans.

The commenters generally were opposed to treating all international loans alike. They cited the statutory provision which mandates certain accounting treatment of fees on restructured loans but provides the banking agencies with discretion as to other international loans. They also stated that the legislative history of the Act shows the major Congressional concern was with restructured loans to debtor countries, and the need to avoid imposing excessive debt burden in those instances.

Section 906(b) of the Act, unlike section 906(a), provides that the bank regulatory agencies shall establish rules that require that the "appropriate portion" of fees related to international loans be taken into income over the effective life of the loan. In implementing this section of the law, the commenters considered that the agencies should adopt rules that recognize the economic substance of the transactions for which fees are charged. The commenters stated that some fees in excess of administrative costs are compensation for services provided, are unrelated to yield adjustment, and therefore should not be deferred and amortized.

In light of the language and legislative history of the provision and in response to the comments, the final regulations distinguish between restructured international loans and other international loans in the required accounting treatment for fees.

(3) Definition of "Restructured International Loan"

In order to distinguish between restructured international loans and all other international loans for purposes of accounting for fees, it is necessary that "restructured international loan" be defined to meet the particular scope and purpose of section 906(a). The commenters generally suggested that the definition cover restructured loans to borrows in countries with severe foreign exchange or liquidity problems. Several indicated that the definition of a restructured loan could be linked to loans made to countries that had been classified by the agencies for transfer risk purposes.

Some commenters suggested that restructured loans include refinancings or loans the terms of which had been modified or maturities extended in order to permit the loan to be repaid. Others suggested using the definition of "troubled debt restructuring" in the

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Statement of Financial Accounting Standard No. 15 (SFAS 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings"), issued by the FASB.

Because section 906(a) refers to restructurings of international loans to avoid excessive debt service burden on debtor countries, the regulations provide that the definition of restructured loan contain two criteria. First, the borrower whose loan is being restructured because of debt service difficulties must be a resident of a foreign country experiencing a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, foreign exchange in that country. Second, in a restructuring, the terms of the loan are revised to extend the original schedule of payments or reduce stated interest, or the restructuring takes the form of provision of new funds for the benefit of the borrower that has the same effect as extending the schedule of payments or reducing stated interest on the original loan. These criteria are intended to cover loans restructured to meet debt service difficulties, but not ordinary refinancings.

For any loan that meets the definition of restructured international loan, the regulations prohibit a banking institution from charging any fee unless the portion of the fee in excess of administrative costs is deferred and amortized over the effective life of the loan. If any loan meets the more restrictive category of a "troubled debt restructuring" under the terms of SFAS 15, it should be accounted for in accordance with that Standard. Moreover the definition of "restructured loan" adopted to implement the fee accounting rules mandated by statute is in no way intended to categorize any particular loan as a "restructured loan" for purposes of applying any other accounting standard.

(4) Syndication Fees

As indicated above, fees on international loans other than restructured international loans need not all be amortized but, pursuant to section 906(b), must be accounted for in a manner to accrue an appropriate portion of the fee as income over the life of the loan. The purpose of this provision is to assure that any portion of the fee that is in actuality a yield adjustment be accounted for as interest and amortized.

In those instances where a banking institution is managing or syndicating the loan, the proposed rule established a presumption that a portion of a managing banking institution's fees (other than commitment or agency fees) would be considered an adjustment to yield. This portion would be equal to the proportion of fees in relation to loan principal received by the largest non-managing loan participant. The remainder of the fee would be presumed to be a syndication fee and the proposed rule provided that the syndication fee could be recognized as revenue when received only to the extent it equals administrative costs directly identifiable with the syndication process. The excess was to be deferred and amortized over the loan period.

Many commenters agreed that some portion of a syndication fee normally represents an adjustment to yield because a portion of the fee is passed on to participating banks as an incentive to participate in the loan. The commenters concurred with the proposal that this yield adjustment component should be deferred and amortized over the loan period. Most of the commenters agreed also with the presumption in the proposal that the yield adjustment component is that portion of the fee equal to the fee received by the non-managing bank with the largest proportionate share in the syndication. Several commenters, however, disagreed with the presumption, indicating that the greater the participation, the higher the fee that is passed to that bank. Therefore, the regulation should use a weighted method for determining the yield adjustment component of a syndication fee.

The final regulations retain the requirement that, in all international loans (except restructured international loans for which no fee exceeding specified administrative costs may be taken into income immediately), a banking institution shall recognize that portion of syndication fees that represent an adjustment to yield as interest to be amortized over the loan period, using the interest method.

The presumption in the proposal as to the yield adjustment component in a syndication fee has been altered in the final rules. Because a non-managing participating bank performs no syndication services, whatever fee it receives is a yield adjustment. Therefore, the interest yield component of the syndication fee should be based upon the largest fee received by a non-managing loan participant on a pro rata basis. Accordingly, the managing bank's effective yield on its portion of the loan should be at least equal to that of the non-managing loan participant receiving the largest fee.

The commenters strongly disagreed with the requirement that the remainder of a syndication fee also be deferred as a yield adjustment. Most stated that the proposal misconstrues the nature of the management or syndication fee as comprised only of reimbursement of administrative costs and an adjustment to yield. These commenters stated that the syndication fee is a charge for separate services unrelated to the actual lending of money. These "merchant banking functions," for which banking institutions should be separately compensated, include the arranging of the loan (bringing together third parties), using associated expertise, assuming the underwriting risk of the loan, and negotiating the terms of the loan. These fees also include a "profit" on the provision of the services.

Because the fee is compensation for such services, the commenters stated that GAAP provides that the income should be recorded when the service is rendered. Several commenters stated that the services provided by commercial banks are like those provided by merchant banks in the syndication process and that to apply different accounting rules for fee income for such services earned by commercial banks would place them at a competitive disadvantage.

There can be little dispute that banking institutions that are "lead" or "managing" banks provide services, as described by the commenters, in connection with international loan syndications. These banking institutions also frequently participate in the loan, and often their share in the loan is among the largest of all participants. In such circumstances, the activities of the institution in syndicating the loan are, to at least some extent, integral to the lending of funds.

What additional portion of the syndication fees is intended to compensate a managing bank for making the loan, as compared with arranging loans for others, is not easily determined using any generalized standard and may vary from case to case. In those cases where all or a portion of the remaining fee represents a

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yield adjustment, as noted above, such income must be amortized over the loan period. Where all or a portion of the remaining fee instead represents compensation for services provided in arranging the loan, the final regulations allow it to be taken into income when the loan agreement is signed.

In order to assure that, in practice, the appropriate portion of the fee is amortized, the final regulations allow the banking institution to take the fee into income when the loan is closed only to the extent the institution can identify and document the services for which the specified fee was received. Documentation for this purpose shall include the loan agreement, signed by all of the parties to the loan, which identifies the services provided and the total fee received by the institution for provision of such syndication or management services. Normally, these agreements contain the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower. If the portion of fees received representing compensation for such services cannot be so identified and documented, then the fee will be presumed to be an adjustment to yield and must be amortized over the life of the loan. Fees received by a "managing bank" in name only are not compensation for syndication services and must be amortized over the life of the loan.

(5) Commitment Fees

The proposed regulations required banking institutions to defer all commitment fees over the term of the combined commitment and expected loan period. Commenters generally opposed this requirement, indicating that such fees should be recognized as income over the commitment period. Objections largely centered on the impracticability of the requirement and the fact that commitment fees are intended as compensation for guaranteeing the funding of a loan and are not yield related. Therefore, the deferral of these fees beyond the commitment period is inconsistent with their nature and purpose. Commenters cited revolving credit arrangements as an example where the proposed rule is particularly inappropriate. Fees on revolving credit commitments are based on the unused line of credit and typically are received periodically in arrears, clearly evidencing their purpose to compensate the bank for the funding risk assumed. Moreover, in such cases, the "loan period" would be particularly difficult to estimate. Many commenters indicated that commitment fees should be recognized in income based on their economic substance consistent with the requirements of the Bank Audit Guide issued by the AICPA.

In light of these comments, the agencies have determined to revise the proposed regulations as they relate to commitment fees to be consistent with the treatment of such fees in the Bank Audit Guide. Accordingly, commitment fees could be taken into income over the commitment period alone. The final regulations retain the requirement to defer commitment fees over the combined term of the loan and commitment period only in those situations when it is not practicable to identify that portion of the fee related to making the commitment as compared with any portion related to lending funds. This includes instances where the fee is unreasonable in comparison with normal banking practices whereby, as indicated by banking industry commenters, such fees typically fall within a narrow range (currently ¼% to ½% per annum) regardless of customer. As required by section 906(a) of the Act, a commitment fee received in connection with a restructured international loan must be amortized over the loan period.

Further, based on responses that commitment fees on revolving loan arrangements are generally received periodically in arrears during the commitment period and are based on the amount of the unused loan commitment, the regulations permit such fees to be recognized as income on a cash basis provided the result would not be materially different from deferring these fees and amortizing them over the commitment period. Finally, the regulations were clarified to state that, if the loan is funded before the end of the commitment period, any unamortized commitment fees may be recognized as revenue at that time.

(6) Administrative Costs

Under the proposed regulations, administrative costs for originating or restructuring a loan, or managing a syndicated loan were similarly defined and were required to be expensed as incurred. Such costs were defined as those which are specifically identified with processing the loan or negotiating and consummating the lending arrangement in the case of an international syndicated loan. These costs included, but were not necessarily limited to: legal fees; costs of preparing and processing loan documents; an allocable portion of salaries and related benefits of employees engaged in the international lending function or, for managing banks, employees, engaged in the syndication function; and an allocable portion of occupancy and other similar costs.

In the preamble to the proposed regulation, the agencies specifically asked whether all or certain costs should be capitalized rather than expensed as incurred and how banking institutions should account for the costs of their merchant banking activities.

The majority of the commenters agreed that costs in both activities should be expensed as incurred. They indicated this is the generally accepted practice in the industry. Some commenters mentioned that the AICPA's Accounting Standards Executive Committee recommendation of capitalizing costs is not a currently accepted practice and represents only a recommendation to the FASB for its consideration in addressing the loan fee issue. Other commenters indicated that the capitalization of such costs would inflate the balance sheet and require the burdensome development of accounting systems to accumulate and track the information. Some of these commenters contended that the initial cost of establishing such an accounting system would outweigh the benefits.

On the issue of defining administrative costs, only a few commenters thought that the proposed definition was too restrictive and suggested that general overhead costs in addition to those specifically identifiable with processing or consummating a loan should be included. Most commenters considered that the definition encompassed too many allocated costs and suggested that only incremental costs be included. They noted that inclusion of these allocated costs is not current accounting practice and would require establishment of new cost accounting systems. A number of commenters indicated the definition should be consistent with that set forth in SFAS 17 (Accounting for Leases—Initial Direct Costs) and the Bank Audit Guide.

In light of these comments, the agencies have determined that, consistent with GAAP, administrative costs will be required to be expensed as incurred and defined to include only

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specifically identified direct costs as provided in SFAS 17. Accordingly, supervisory and administrative expenses or other indirect expenses such as occupancy and other similar costs may not be included.

The rule thus would be consistent with GAAP and the Bank Audit Guide, and will not create an undue burden for banking institutions.

(7) Other Issues

There was no disagreement with the basic rules requiring that fees be deferred and amortized over the effective life of the loan unless specific treatment for a particular fee is specified elsewhere in the regulations. Therefore, no change was made in these provisions. The effective life of the loan in this context and in the regulations generally, is meant to be the term of the loan. This may, however, differ from the stated loan period, where, for example, a short-term loan is expected to be rolled-over at maturity.

Several commenters requested the option to amortize the entire fee, whether received in connection with a restructuring or other international loan, rather than being required to recognize a portion of the fee equal to administrative costs as income in the same period such costs are expensed. While immediate recognition of this portion of the fee is the preferred accounting treatment, the final rule also allows deferral and amortization of the entire fee.

Those comments discussing agency fees agreed with the treatment of such fees in the proposed rules and, accordingly, no change in this provision was made in the final rules.

Several comments raised the issue of materiality. Determinations of materiality for the purpose of application of the rules should be made in accordance with GAAP with the exception of the rule on treatment of fees for restructured international loans. That rule must be applied regardless of materiality because it is based on a specific statutory requirement.

One commenter asked how the unamortized balance of fees should be treated when the asset is sold. Sufficient accounting guidance already is provided on this question in GAAP and the agencies do not believe that a specific rule on this point is necessary.

Finally, the Federal banking agencies intend, through the examination process, to oversee good faith compliance with the Act and these regulations. In the event that the regulations do not achieve the objective of assuring that the appropriate portion of fee income is recognized as an interest yield adjustment, the agencies will revise the regulations or review individual institutions' accounting practices as needed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) the agencies certify that the regulations will not have a significant economic impact on a substantial number of small entities since small banks generally do not engage extensively in international lending and would not be affected by these regulations.

Executive Order 12291

The Comptroller of the Currency has determined that the proposed regulation does not constitute a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Parts 20, 211, and 351

Accounting for international loan fees, Banks, banking, Federal Reserve System, Foreign banking, Investments, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve, National banks, International operations, Reserves on certain international assets, Reporting and disclosure of international assets, State nonmember banks.

Authority and Issuance

Pursuant to their respective authorities, the agencies are amending Title 12 of the Code of Federal Regulations, Parts 20, 211 and 351, as follows:

FEDERAL RESERVE SYSTEM

Regulation K

[Docket No. R-0509]

PART 211—[AMENDED]

Pursuant to the Board's authority under sections 9, 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 221 *et seq.*, 601–604a, and 611 *et seq.)*, section 5 of the Bank Holding Company Act (12 U.S.C. 1844) and section 906 of the International Lending Supervision Act of 1983 (12 U.S.C. 3905), the Board has amended 12 CFR Part 211, Subpart D, as follows:

1. By redesignating paragraph § 211.42(d) as 211.42(h) and by adding new paragraphs § 211.42 (d), (e), (f) and (g), to read as follows:

§ 211.42 Definitions.

* * * * *

(d) "International loan" means a loan as defined in the instructions to the "Report of Condition and Income" for the respective banking institution (FFIEC Nos. 031, 032, 033 and 034) and made to a foreign government, or to an individual, a corporation, or other entity not a citizen of, resident in, or organized or incorporated in the United States.

(e) "International syndicated loan" means a loan characterized by the formation of a group of "managing" banking institutions and, in the usual case, assumption by them of underwriting commitments and participation in the loan by other banking institutions.

(f) "Loan agreement" means the documents signed by all of the parties to a loan, containing the amount, terms and conditions of the loan, and the interest and fees to be paid by the borrower.

(g) "Restructed international loan" means a loan that meets the following criteria:

(1) The borrower is unable to service the existing loan according to its terms and is a resident of a foreign country in which there is a generalized inability of public and private sector obligors to meet their external debt obligations on a timely basis because of a lack of, or restraints on the availability of, needed foreign exchange in the country; and

(2) the terms of the existing loan are amended to reduce stated interest or extend the schedule of payments; or

(3) a new loan is made to, or for the benefit or, the borrower, enabling the borrower to service or refinance the existing debt.

* * * * *

2. By adding a new section 211.45, to read as follows:

§ 211.45 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge any fee in connection with a restructured international loan unless all fees exceeding the banking institution's administrative costs, as described in paragraph (c)(2) of this section, are deferred and recognized over the term of the loan as an interest yield adjustment.

(b) *Amortizing fees.* Except as

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otherwise provided by this section, fees received on international loans shall be deferred and amortized over the term of the loan. The interest method should be used during the loan period to recognize the deferred fee revenue in relation to the outstanding loan balance. If it is not practicable to apply the interest method during the loan period, the straight-line method shall be used.

(c) *Accounting treatment of international loan or syndication administrative costs and corresponding fees.* (1) Administrative costs of originating, restructuring or syndicating an international loan shall be expensed as incurred. A portion of the fee income equal to the banking institution's administrative costs may be recognized as income in the same period such costs are expensed.

(2) The administrative costs of originating, restructuring, or syndicating an international loan include those costs which are specifically identified with negotiating, processing and consummating the loan. These costs include, but are not necessarily limited to: legal fees; costs of preparing and processing loan documents; and an allocable portion of salaries and related benefits of employees engaged in the international lending function and, where applicable, the syndication function. No portion of supervisory and administrative expenses or other indirect expenses such as occupancy and other similar overhead costs shall be included.

(d) *Fees received by managing banking institutions in an international syndicated loan.* Fees received on international syndicated loans representing an adjustment of the yield on the loan shall be recognized over the loan period using the interest method. If the interest yield portion of a fee received on an international syndicated loan by a managing banking institution is unstated or differs materially from the pro rata portion of fees paid other participants in the syndication, an amount necessary for an interest yield adjustment shall be recognized. This amount shall at least be equivalent (on a pro rata basis) to the largest fee received by a loan participant in the syndication that is not a managing banking institution. The remaining portion of the syndication fee may be recognized as income at the loan closing date to the extent that it is identified and documented as compensation for services in arranging the loan. Such documentation shall include the loan agreement. Otherwise, the fee shall be deemed an adjustment of yield.

(e) *Loan commitment fees.* (1) Fees which are based upon the unfunded portion of a credit for the period until it is drawn and represent compensation for a binding commitment to provide funds or for rendering a service in issuing the commitment shall be recognized as income over the term of the commitment period using the straight-line method of amortization. Such fees for revolving credit arrangements, where the fees are received periodically in arrears and are based on the amount of the unused loan commitment, may be recognized as income when received provided the income result would not be materially different.

(2) If it is not practicable to separate the commitment portion from other components of the fee, the entire fee shall be amortized over the term of the combined commitment and expected loan period. The straight-line method of amortization should be used during the commitment period to recognize the fee revenue. The interest method should be used during the loan period to recognize the remaining fee revenue in relation to the outstanding loan balance. If the loan is funded before the end of the commitment period, any unamortized commitment fees shall be recognized as revenue at that time.

(f) *Agency fees.* Fees paid to an agent banking institution for administrative services in an international syndicated loan shall be recognized at the time of the loan closing or as the service is performed, if later.

Board of Governors of the Federal Reserve System, March 26, 1984

William W. Wiles,

Secretary of the Board.

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