

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10541**]
June 2, 1992]

Electronic Access

*To All Depository Institutions in the Second
Federal Reserve District, and Others Concerned:*

Enclosed is a new Operating Circular No. 5, governing the use of electronic connections between this Bank and a Participant (a depository institution or other authorized institution) for the purpose of accessing services or sending information. For example, electronic connections are currently used by depository institutions to originate funds transfer messages or review account information. The operating circular applies only to the use of the electronic connections and does not contain the substantive provisions that govern the services or other arrangements themselves. Thus, for example, Operating Circular No. 8 continues to govern funds transfer messages.

The circular contains many of the provisions currently found in Appendix D to Operating Circular No. 8 and amends and supersedes the agreement contained in that Appendix. Accordingly, depository institutions that have executed the letter agreeing to the terms of Appendix D have thereby agreed to the terms of the new Operating Circular No. 5 and need take no further action. Institutions that do not wish to so agree to the terms of this operating circular may terminate the agreement as indicated by paragraph 24 thereof. Institutions that have not agreed to Appendix D to Operating Circular No. 8 are required to execute a letter in the form of Appendix A to the new Operating Circular No. 5 to establish an electronic connection.

If you have any questions, please contact your account representative (at the Head Office call (212) 720-6600; at the Buffalo Branch call (716) 849-5085), or call Michael Mowbray, Manager, Electronic Operations Support Department, at (212) 720-7972.

E. GERALD CORRIGAN,
President.

**FEDERAL RESERVE BANK
OF NEW YORK**

Operating Circular No. 5
June 1, 1992

ELECTRONIC ACCESS

*To All Depository Institutions in the Second
Federal Reserve District, and Others Concerned:*

1. This operating circular sets forth the terms under which depository institutions and other authorized institutions ("Participants") may access certain services provided by the Federal Reserve Bank of New York, and may send to us or receive from us certain data, by means of electronic connections. For purposes of this circular, an "electronic connection" refers to communication facilities, other than telephone voice-response systems, used to exchange data between a Participant's computer(s) (which term includes terminal(s)) and our computer(s).

2. The services that may be accessed using electronic connections include, for example, transfers of funds and securities, commercial and governmental automated clearing house transactions, notifications of nonpayment of checks, orders for cash and savings bonds, our sending of data (such as check information, Federal tax payment advices, and statements of account) to Participants, and Participants' sending of data (such as statistical/financial reports and Treasury Tax and Loan reports) to us. We may from time to time offer other services using electronic connections.

3. This circular does not supersede the substantive circulars, regulations, or instructions governing particular types of transactions, but only governs the use of electronic connections to effect such transactions. A Participant that has executed a letter agreeing to the terms of Appendix D, "Licensed Software Agreement," to our Operating Circular No. 8 thereby agrees to the terms of this circular, which amends and supersedes Appendix D. Other Participants agree to the terms of this circular by executing the letter agreement attached hereto as Appendix A.

4. Our prior written approval is required before (a) a Participant uses an electronic connection for access to any of our services or to send any data to us, (b) a Participant shares the use of an electronic connection with another Par-

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ticipant, or has any other party act as its agent in sending or receiving transfers or other messages, or (c) a Participant sublicenses, assigns, or transfers any of its rights, duties, or obligations under this circular.

Participant's equipment and software

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

Communication lines

6. A Participant may choose, where available, an electronic connection that utilizes a dial (or switched), multi-drop leased, or dedicated ("point-to-point") leased circuit. If the volume of data sent or received differs from our guidelines for a type of line, we may require a change in the type of connection.

FRB-supplied equipment and software

7. We may arrange for the delivery and installation of modems, encryption devices, and other equipment necessary for electronically connecting a Participant's computer(s) to us, and we will repair or replace as soon as practicable any such equipment that malfunctions. Our equipment may not be altered, encumbered, relocated, or removed, except with our prior written approval.

8. We provide, on request, either Computer Interface Protocol Specifications or software (including updates, modifications, and documentation) to enable a participant's computer to connect to our network. We provide one copy of our software for each computer directly connected to our network and we may provide one copy for each terminal used for data entry and export to a computer directly connected to our network. We grant the Participant a non-exclusive, non-transferable license to use our software for the purposes stated in this circular. We also supply logon identification, encryption keys, and user manuals, and may provide training to a Participant's employees in the use of our software.

9. We warrant that we have the right to license or sublicense our software, and we shall indemnify and hold any Participant harmless from any loss or expense arising from any claim that our software infringes a patent, copyright, trademark, or other proprietary right of any third party, if we are given prompt written notice of the claim, if we have sole control of the defense of the claim and of any settlement negotiations, and if the Participant cooperates fully with us in the defense and negotiations.

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

- (a) modify, add to, transfer, reverse assemble, or reverse compile our software;

- (b) use our software other than on a computer(s) for access to our network, or on a terminal(s) used for entry of data which is to be exported to such a computer; all such computers and terminals should be located on the Participant's premises.
- (c) copy our software except for use consistent with subparagraph (b) and except for back-up purposes; all copies shall include our copyright and proprietary notices externally in the distribution medium and internally in machine-readable form; or
- (d) remove any copyright notices contained in our software.

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

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

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

what we believe is commercially reasonable technology to prevent the introduction of viruses and other defects.

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

Risk and liability in use of electronic connections

15. Each Participant acknowledges that its electronic connection, our software, diskettes, encryption keys, logon IDs, passwords, and other access control features can be used to originate funds and other value messages as well as nonvalue messages. Each Participant assumes sole responsibility and the entire risk of use and operation of its electronic connection and related items, and agrees that we may act on any message that we receive through an electronic connection and that we authenticate as the Participant's under our procedures, to the same extent as though we have received a written instruction bearing the manual signature of a duly authorized officer of the Participant. It is also agreed that we are not liable for delays, errors or omissions in the transmission of messages to or from the Participant resulting from imperfections in the equipment or lines or otherwise beyond our control.

16. Our liability in connection with payment orders (as defined in Article 4A of the Uniform Commercial Code) is as set forth in Subpart B of Regulation J of the Board of Governors of the Federal Reserve System and our Operating Circulars No. 8, "Wire Transfers of Funds," and No. 10, "Automated Clearing House Items." With respect to our liability in other areas, nothing in paragraph 15 shall be construed to relieve us from responsibility for our own failure to exercise ordinary care or to act in good faith, except that our liability is strictly limited to damages proximately suffered by a Participant and does not extend to lost profits, claims against a Participant by others, or other consequential or incidental damages, even if we have been informed of the possibility of such damages.

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

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

19. Each Participant should manage its electronic connection(s) so as to per-

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

20. Problems with hardware, software, or data transmission may on occasion delay or prevent us from sending or receiving payments or other data electronically. Accordingly, Participants should be prepared to send or receive payments or other data by other means.

Fees

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

22. If because of a failure of a Participant's equipment either we or a Participant revert to an off-line procedure, we reserve the right to charge our off-line fees.

Taxes

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

Termination

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

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

Revision of this circular

26. We reserve the right to amend this circular at any time, but will endeavor to give at least thirty (30) calendar days' notice to each Participant.

Effect of this circular on previous circular

27. This circular supersedes Appendix D, dated June 29, 1988, to our Operating Circular No. 8.

E. GERALD CORRIGAN,
President.

APPENDIX A
ELECTRONIC ACCESS AGREEMENT

[To be typed on the depository institution's letterhead]

Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045

Attention: Manager
Electronic Operations Support Department

We hereby agree to the terms contained in your Operating Circular No. 5,
Electronic Access.

(Name of depository institution)

By: _____
(Authorized signature)

(Title)

Date: _____