

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10804**]
October 3, 1995]

FEDWIRE THIRD PARTY ACCESS POLICY

Revision of Appendix C to Operating Circular No. 8

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

The Board of Governors of the Federal Reserve System has amended its Fedwire third party access policy, effective August 10, 1995 (see our Circular No. 10802, dated September 6, 1995). Existing third party access arrangements must comply with the revised policy by March 1, 1996.

The Federal Reserve Bank of New York has revised Appendix C to its Operating Circular No. 8, "Funds Transfers Through Fedwire," to reflect the changes to the third party access policy. The Appendix, which is enclosed, is effective immediately.

Please note that the model board of director resolutions attached to the Appendix as Exhibits 2-4 do not need to be submitted to this Bank in order for us to approve a third party access arrangement. The Exhibits have been included in the Appendix merely as examples of what satisfies the requirement for board of director approval in the third party access policy.

If you have any questions concerning third party access arrangements, please contact Andrew Heikaus, Assistant Vice President, Electronic Payments (Tel. No. 212-720-5561), or Richard J. Gelson, Vice President, Accounting (Tel. No. 212-720-7766).

The revised Appendix supersedes Appendix C, revised June 29, 1988, to Operating Circular No. 8.

WILLIAM J. McDONOUGH,
President.

**FEDERAL RESERVE BANK
OF NEW YORK**

[**Appendix C to
Operating Circular No. 8**
Revised October 3, 1995]

**WIRE TRANSFERS OF FUNDS AND/OR
BOOK-ENTRY SECURITIES
Fedwire Third Party Access Arrangements**

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

STATEMENT OF AGREEMENT

1. This Appendix C to Operating Circular No. 8 (Funds Transfers Through Fedwire) establishes the terms of the agreement under which a depository institution (Participant) holding an Account with the Federal Reserve Bank of New York (Reserve Bank) may designate a Service Provider (and Pass-Through Service Provider, if applicable, collectively referred to as Service Provider) to perform one or more of the following functions: origination, transmission and receipt of a Funds Transfer, to or from the Participant's Account, and/or a Securities Transfer to or from the Participant's Securities Account. A debit / credit related to the Transfer is posted to the Account and/or Securities Account as the case may be. A Participant or Service Provider engaged in activities covered by this Appendix shall comply with the Policy Statement on Payments System Risk of the Board of Governors of the Federal Reserve System (Board).

DEFINITIONS

2. As used in this Appendix, unless the context requires otherwise:

a) **Account** means the reserve and/or clearing account maintained by the Participant at the Reserve Bank.

b) **Affiliated** means that (i) at least eighty (80) percent of the voting stock of both the Participant and its Service Provider are commonly owned, or, (ii) either the Participant or its Service Provider owns at least eighty (80) percent of the voting stock of the other.

c) **Credit Limit** means (i) an individual customer transfer limit established for a customer by the Participant; and/or (ii) a transfer limit established by the Participant for the Participant's own Transfers ("bank-to-bank" Transfers).

[Enc. Cir. No. 10804]

d) **Fedwire** is the system operated by the 12 Federal Reserve Banks for the electronic transfer of funds and book-entry securities.

e) **Funds Transfer(s)** means a payment order or non-value message originated or received over Fedwire.

f) **Gateway** is an electronic connection used to access electronic services in multiple Federal Reserve districts using one physical connection.

g) **Gateway Reserve Bank** is the Reserve Bank that maintains the physical Gateway connection with the Service Provider.

h) **Securities Account** means a book-entry securities account maintained by the Participant at a Reserve Bank.

i) **Securities Transfer** means a transfer of book-entry securities over Fedwire.

j) **Settling Reserve Bank**, for purposes of a Gateway arrangement, is the Federal Reserve Bank at which the Participant maintains the Account and Securities Account.

k) **Transfer** means a Funds Transfer or a Securities Transfer.

GENERAL

3. The Participant shall provide to its Reserve Bank a Letter of Authorization containing the information described in Exhibit 1 to this Appendix before participating in a third party access arrangement covered by this Appendix.

4. The Participant may authorize a Service Provider to act as the Participant's agent for initiating, transmitting and/or receiving a Funds Transfer where the Participant is the transferor or transferee. Any such Funds Transfer sent by the Service Provider is an authentic and fully authorized Funds Transfer as if it were sent in writing and signed by a duly authorized officer of the Participant. Notwithstanding the operational routing of any such Funds Transfer through the Service Provider, the Reserve Bank will make any debit or credit entry relating to the Funds Transfer to the Account. Fedwire Funds Transfers are subject to the requirements of the Board's Regulation J (12 CFR Part 210, Subpart B), and the Reserve Bank's Operating Circular No. 8 (Funds Transfers Through Fedwire) and Operating Circular No. 5 (Electronic Access). Terms defined in Subpart B of Regulation J have the same meaning when used in this Appendix.

5. The Participant may also authorize the Service Provider to act as the Participant's agent for initiating, transmitting and/or receiving a Securities Transfer to or from the Securities Account, if the requirements of this Appendix have been complied with. Any debit or credit with respect to a Securities Transfer will be made to the Account. Any securities transferred from or received for the Participant will be debited or credited, as the case may be, to the Securities Account. The provisions of Operating Circular No. 21 (Book-Entry Securities Account Maintenance and Transfer Services) apply to Securities Transfer third party access arrangements.

6. The Participant may not enter into a third party access arrangement involving a Service Provider, including a foreign office of the Participant, that

is located outside the United States ("Foreign Service Provider"). Any arrangement established prior to August 10, 1995 involving a Foreign Service Provider must be reported promptly to the Participant's Reserve Bank.

RESPONSIBILITIES OF THE PARTICIPANT

7. The Participant shall ensure that the Service Provider complies with the provisions of this Appendix and any other relevant operating circular(s) of the Reserve Bank as well as any policy or regulation of the Board with respect to the wire transfer of funds, book-entry securities, electronic access and payments system risk. However, the use of a third party access arrangement, and the provision of these services by the Service Provider to the Participant, shall in no way affect or diminish any obligation or duty of the Participant to the Reserve Bank.

8. The Participant shall retain full responsibility for management of its Account with respect to both its intraday and overnight positions. Any overdraft incurred is a binding obligation of the Participant to the Reserve Bank. The Participant shall timely monitor during the business day, funds and/or securities transfer activity handled for it by a Service Provider.

9. The Participant shall maintain an adequate audit program to review any third party access arrangement at least annually. The audit program should include a review of and determination that the transactions handled by a Service Provider meet the requirements set forth in this Appendix.

10. The Participant shall maintain adequate back-up facilities and procedures to process Transfers in case of an operating outage or other development affecting the adequacy of the service. The contingency back-up requirement can be met through back-up procedures and facilities provided either by the Service Provider or the Participant. The Participant is not relieved of this responsibility because it contracts with a Service Provider.

11. If the Service Provider is not Affiliated with the Participant, the Participant must be able to process Transfers if the Participant is unable to continue operating under the third party access arrangement (for example, if the Reserve Bank or the Participant's primary supervisor terminates the third party access arrangement). This back-up requirement can be satisfied by (a) retaining the capability to perform the functions internally that have been delegated to the Service Provider; (b) making arrangements with an alternate Service Provider to take over these functions in the event that the arrangement must be terminated; or (c) by another means acceptable to the Reserve Bank.

12. If a back-up arrangement involves a substitute Service Provider, that substitute Service Provider must have agreed to the terms of this Appendix.

APPROVAL OF INDIVIDUAL TRANSFERS / CREDIT LIMITS

13. A Transfer sent by the Service Provider on behalf of the Participant shall either (a) be individually authorized and approved by the Participant, or (b) be sent by the Service Provider against a Credit Limit that has been approved by the Participant and communicated to the Service Provider. The

Participant shall periodically review the appropriateness of the established Credit Limits.

14. Where the Participant uses a Service Provider but does not individually authorize and approve each Transfer, the Service Provider must have procedures in place and the operational capability to ensure that a Funds Transfer that would exceed the established Credit Limit is not permitted without first obtaining the Participant's specific authorization. In the case of a Securities Transfer, the Service Provider must have the operational capability and procedures in place to reverse an incoming Securities Transfer that exceeds an established Credit Limit, unless the Service Provider notifies the Participant of the incoming Securities Transfer and the Participant expressly directs the Service Provider not to reverse the Securities Transfer.

AUTHORIZATION FOR THIRD PARTY ACCESS ARRANGEMENT

15. The Participant's board of directors shall authorize the role and responsibilities of an unaffiliated Service Provider, (see Exhibit 2 to this Appendix for an acceptable model). In third party access arrangements using Credit Limits, the Participant's board of directors shall approve (a) the intraday overdraft limit for the activity to be processed by the Service Provider (see Exhibit 3 to this Appendix for an acceptable model), and (b) the Credit Limits for any inter-affiliate funds transfer (see Exhibit 4 to this Appendix for an acceptable model).

16. If the Participant is a U.S. branch of a foreign bank whose board of directors has a more limited role in the bank's management than a U.S. board, the role and responsibilities of the Service Provider should be reviewed by senior management at the foreign bank's head office that exercises authority over the foreign bank equivalent to the authority exercised by a board of directors over a U.S. depository institution. Senior management of the head office should make the approvals required by paragraph 15.

17. The third party access arrangement must be consistent with the principles of corporate separateness and must not violate any state or federal law restrictions on branching.

GATEWAY ARRANGEMENT

18. In any Gateway arrangement, the Gateway Reserve Bank shall establish procedures for maintenance of the Gateway connection. The Gateway Reserve Bank's procedures shall be provided to each Service Provider and Participant using the Gateway arrangement. The Service Provider shall comply with the Gateway Reserve Bank's procedures governing maintenance of the Gateway connection. The Participant and Service Provider shall comply with the Settling Reserve Bank's requirements related to any other matters involving the third party access arrangement.

19. The law of the state in which the Settling Reserve Bank is located shall apply to a Gateway arrangement.

MISCELLANEOUS PROVISIONS

20. The Service Provider must demonstrate the capability to separate Transfers sent or received by the Service Provider as a Participant's agent from other Transfers sent or received by the Service Provider for itself or for any other Participant.

21. The initiation, transmission or receipt of a Transfer by the Service Provider constitutes the initiation, transmission or receipt of the Transfer by the Participant for purposes of authorizing the Reserve Bank to debit or credit the Account or Securities Account, as the case may be.

22. A Service Provider participating in an arrangement subject to this Appendix shall be subject to examination by the appropriate federal depository institution regulatory agency(ies).

23. If the Participant and the Service Provider **are not** affiliates, the Participant and the Service Provider each warrant that the Service Provider is (i) a depository institution, or (ii) an independent company subject to examination pursuant to the Bank Service Corporation Act (12 U.S.C. § 1876), by virtue of providing bank services.

24. The Participant shall obtain and submit to the Reserve Bank upon request a written affirmation from its primary supervisor(s) that the supervisor(s) does not object to the third party access arrangement.

25. A Service Provider, whether or not Affiliated with the Participant, shall:

- (a) initiate, transmit and receive a Transfer without altering the terms of the Transfer unless the alteration was previously approved by the Participant;
- (b) verify the completeness and acceptability of each Transfer instruction; and
- (c) initiate or input and release each Transfer instruction as directed by the Participant.

INDEMNIFICATION

26. The Participant and the Service Provider shall defend, indemnify, and hold this Bank harmless against any claim, loss, cost or expense, including, but not limited to, attorneys' fees and expenses of litigation, resulting from the third party access arrangement or the acts or omissions of either the Participant or the Service Provider or their agents except, however, for any claim, loss, cost or expense arising solely out of the Reserve Bank's failure to exercise ordinary care.

TERMINATION

27. The Service Provider may terminate its participation in a third party access arrangement by giving thirty (30) days' prior written notice to the Reserve Bank and the other party(ies). The Participant may terminate its participation in a third party access arrangement at any time provided that the Participant has an alternative processing arrangement in place and prior written notice is given to the Reserve Bank and the other party(ies). The Reserve Bank reserves the right, without prior notice, to terminate any arrangement covered by this Appendix.

GOVERNING LAW

28. Except as otherwise provided in paragraph 19 relating to a Gateway arrangement, the terms of this Appendix shall be construed according to and governed by federal law, and the law of the state of New York, to the extent such law is not inconsistent with federal law.

29. The provisions of this Appendix are binding on the legal representatives, successors and assigns of the parties to a third party access arrangement.

AMENDMENT

30. The Reserve Bank reserves the right to amend the provisions of this Appendix at any time without notice. However, the Reserve Bank will attempt to give at least thirty (30) calendar days' prior notice of any amendment.

EFFECT OF THIS APPENDIX ON PREVIOUS APPENDIX

31. This Appendix supersedes Appendix C, revised June 29, 1988, to Operating Circular No. 8.

WILLIAM J. McDONOUGH,
President.

EXHIBIT 1

LETTER OF AUTHORIZATION¹

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

Attention: Manager, [*Funds Transfer Department and/or Securities Transfer Department*]

We agree to the terms contained in Appendix C to your Operating Circular No. 8, and have complied with all of its prerequisites to establish a third party access arrangement with respect to [*wire transfers of funds and/or book-entry securities transfers*]. The third party access arrangement is more fully described as follows: [*describe how transfers will be handled for the Participant by each Service Provider, including procedures to ensure that a Service Provider cannot permit or initiate a transfer that would exceed an individual customer credit limit without first obtaining the Participant's permission; a description of the Service Provider's operational capability to ensure that the aggregate transfer activity of the Participant does not result in a daylight overdraft over the Participant's cap; procedures and back-up facilities adequate to cover equipment failure or termination of the Service Provider arrangement; and procedures by which the Participant will monitor transfers being made on its behalf.*]

[*Insert, as applicable, name of Service Provider and Substitute or Pass-through Service Provider*], the Service Provider(s), [*is(are)/is not(are not) an affiliate of this depository institution, as defined in Appendix C to Operating Circular No. 8.*]² [*If the Service Provider(s) is(are) not affiliated with the Participant note the date on which the Participant's board of directors approved the role and responsibilities of the Service Provider with respect to this third party access arrangement.*] [*If the third party access arrangement involves the use of credit limits, note the date on which the Participant's board of directors approved the credit limit(s).*]

The Service Provider(s) shall act as the Participant's agent(s) for the purpose of initiating, transmitting and receiving transfers where the Participant is the transferor or transferee. Any such transfer constitutes an authentic and fully authorized transfer as if it were sent in a writing signed by a duly authorized officer of the Participant.

This third party access arrangement will allow [Name of Participant] to comply with all applicable state and federal laws and regulations governing it, including, retaining and making accessible records in accordance with the regulations adopted under the Bank Secrecy Act.

¹ To be typed on the letterhead of the depository institution holding the Account.

² Include here information concerning whether each Service Provider is or is not an affiliate of the Institution.

This third party access arrangement is consistent with the principles of corporate separateness and does not violate any state or federal law restrictions on branching.

The Service Provider(s) may terminate the Agreement by written or telegraphic notice to the Participant and to the Manager of your Funds Transfer Department and/or your Securities Transfer Department if book-entry securities transfers are conducted under this arrangement, which notice shall be effective thirty (30) days after receipt. The Participant may terminate the Agreement at any time by written or telegraphic notice to the Service Provider(s) and to the Manager of your Funds Transfer Department and/or your Securities Transfer Department if book-entry securities transfers are conducted under this arrangement, which notice shall be effective as soon as an alternate processing arrangement is in place.

[Name of Participant]

BY: _____

TITLE: _____

DATE: _____

[Name of Service Provider]

BY: _____

TITLE: _____

DATE: _____

[Name of Pass-Through Service Provider]³

BY: _____

TITLE: _____

DATE: _____

[Name of Substitute Service Provider]³

BY: _____

TITLE: _____

DATE: _____

³ Only include these signature lines if applicable.

EXHIBIT 2⁴
MODEL RESOLUTION
AUTHORIZING OPERATIONAL RELOCATION OF
WIRE TRANSFER OF FUNDS AND/OR
BOOK-ENTRY SECURITIES ACTIVITY
TO A SERVICE PROVIDER

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 (Participant), duly authorized and existing under the laws of _____, which meeting was duly called and held on the ___ day of _____, 19___, at which meeting a quorum was present, and that these resolutions are now in full force and effect and are not in conflict with any provisions in the certificate of incorporation or bylaws of the Participant, or with applicable law.

1. RESOLVED, that [*Insert the title of authorized officers*] of the Participant, and their successors in office, be, and any [*Insert appropriate number*] of them, is/are authorized to enter into an arrangement with [*Insert name of service provider and pass-through service provider, as applicable*] (Service Provider(s)) and the Federal Reserve Bank of _____ (Reserve Bank), by which the Service Provider(s) may on behalf of the Participant to [*originate and/or receive a funds transfer from or to the Participant's reserve and/or clearing account*] and/or [*order the transfer of book-entry securities held in the Participant's book-entry securities accounts, and/or accept delivery of book-entry securities into the Participant's book-entry securities accounts.*]

2. RESOLVED, that the Participant shall defend, indemnify and hold the Reserve Bank harmless from any claim, loss, or expense sustained (including, but not limited to, attorney's fees and litigation costs) arising out of or resulting from the Reserve Bank's handling of funds and/or securities transfers under the arrangement, other than loss or expense caused solely by the failure of the Reserve Bank to exercise ordinary care.

3. RESOLVED, that the Reserve Bank is authorized to debit/credit the Participant's reserve and/or clearing account at the Reserve Bank according to instructions received from the Service Provider(s) even if a debit associated with a transfer of [*funds or book-entry securities*] results in an overdraft in the Participant's reserve and/or clearing account. Should any debit to the Participant's reserve and/or clearing account result in an overdraft, the Participant is hereby authorized to incur the indebtedness and shall be indebted to the Reserve Bank for the overdraft.

4. RESOLVED, that as a part of the arrangement, the Service Provider(s) must agree that [*it (they) will not send to the Reserve Bank any transfer of funds or book-entry securities that has not been individually authorized and approved by the Participant*] or [*it (they) will not send to the Reserve Bank*

⁴ For use only in an unaffiliated Service Provider third party access agreement.

any transfer that would exceed the limits adopted by the Participant from time to time and communicated to the Service Provider(s)].⁵

5. RESOLVED, that these resolutions and all of 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.

IN WITNESS WHEREOF, I have hereunder subscribed my name.

DATED: _____, 19____.

[Signature of certifying official]

[Name and Title]⁶

⁵ The limits referred to include the sender net debit cap and specific limits on transfers to affiliates, and the specific customer credit limits. The sender net debit caps and limits on transfers to affiliates must be approved by the board of directors in other resolutions. The customer credit limits may be adopted by the board or may be established under the Institution's ordinary procedures for establishing credit limits.

⁶ Cashier/Comptroller / Secretary.

EXHIBIT 3a⁷
MODEL RESOLUTION — DE MINIMIS CAP

The following resolutions were duly adopted at a meeting of the [Type of governing body, e.g., board of directors or trustees] of the [Official name of participant], the ("Participant"), duly authorized and existing under the laws of _____, which meeting was held on the _____ day of _____, 19____, and that these resolutions are now in full force and effect and are not in conflict with any provisions in the certificate of incorporation or bylaws of the Participant, or with applicable law.

WHEREAS, the Board of Governors of the Federal Reserve System has announced a policy of reducing risks on payment systems that requires each depository institution that incurs daylight overdrafts in its Federal Reserve account to adopt a net debit cap category; and

WHEREAS, this Participant desires to comply with the Federal Reserve's policy; and,

WHEREAS, the board of directors met today and considered the report submitted by management that addresses how the Participant plans to comply with the Federal Reserve's policy and makes recommendations regarding a net debit cap category.

NOW, THEREFORE, be it resolved that the board of directors adopts the *de minimis* cap as its net debit cap category.

RESOLVED, that these resolutions and all of 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 or for one year, whichever occurs earlier.

IN WITNESS WHEREOF, I have hereunder subscribed my name.

DATED: _____, 19_____

[Signature of certifying official]

[Name and Title]

⁷ Only required for third party access arrangements using Credit Limits.

EXHIBIT 3b⁸
MODEL RESOLUTION — SELF-ASSESSMENT CAP

The following resolutions were duly adopted at a meeting of the [Type of governing body, e.g., board of directors or trustees] of the [Official name of participant], the ("Participant"), duly authorized and existing under the laws of _____, which meeting was held on the _____ day of _____, 19____, and that these resolutions are now in full force and effect and are not in conflict with any provisions in the certificate of incorporation or bylaws of the Participant, or with applicable law.

WHEREAS, the Board of Governors of the Federal Reserve System has announced a policy of reducing risks on payment systems that requires each depository institution that incurs daylight overdrafts in its Federal Reserve account to adopt a net debit cap category; and,

WHEREAS, this Participant desires to comply with the Federal Reserve's policy; and,

WHEREAS, the board of directors has this day met and considered the report submitted by management that assesses the Participant's creditworthiness; intraday funds management and controls; customer credit policies and controls; operating controls and contingency procedures; and, credit policies and procedures according to the Federal Reserve's guidelines and that makes recommendations regarding self-assessment ratings, an overall self-assessment, and a net debit cap category.

NOW, THEREFORE, be it resolved that the board of directors adopts the following self-assessment ratings:

Creditworthiness	_____
Intraday funds management and control	_____
Operating controls and contingency procedures	_____
Customer credit policies and controls	_____
Overall assessment	_____

and adopts a daylight overdraft cap category of (*High, Above Average, Average*).

RESOLVED, that these resolutions and all of 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 or for one year, whichever occurs earlier.

IN WITNESS WHEREOF, I have hereunder subscribed my name.

DATED: _____, 19____.

[Signature of certifying official]

[Name and Title]

⁸ Only required for third party access arrangements using Credit Limits.

EXHIBIT 4⁹
MODEL RESOLUTION — INTER-AFFILIATE TRANSFERS

The following resolutions were duly adopted at a meeting of the [Type of governing body, e.g., board of directors or trustees] of the [Official name of participant], the ("Participant"), duly authorized and existing under the laws of _____, which meeting was held on the _____ day of _____, 19____, and that these resolutions are now in full force and effect and are not in conflict with any provisions in the certificate of incorporation or bylaws of the Participant, or with applicable law.

RESOLVED, that whenever, during the business day of the Federal Reserve Bank of _____ (Reserve Bank), the Participant fails to maintain a balance of funds in its account at the Reserve Bank sufficient to cover the amounts of funds transfers, or other debits charged to that deposit account, the Participant shall be indebted to the Reserve Bank to the extent that the balance of such account is negative, and that the Participant is hereby authorized to incur such indebtedness.

RESOLVED, that the Participant is authorized to extend credit during the day to [Insert name of affiliate] by transferring to [Insert name of affiliate]'s account at the Reserve Bank. The aggregate amount of the credit that may be extended to [Insert name of Affiliate] on any day shall not exceed an amount equal to the entire balance of funds in the Participant's account at the Reserve Bank, plus an amount that is not greater than the Participant's net debit cap adopted by the Participant and approved by the Reserve Bank under the policy regarding risks on payment systems adopted by the Board of Governors of the Federal Reserve System, and reduced by the amount of any outstanding indebtedness of the Participant to the Reserve Bank.

RESOLVED, that these resolutions and all of 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, or for one year, whichever occurs earlier.

IN WITNESS WHEREOF, I have hereunder subscribed my name.

[Signature of certifying official]

[Name and Title]

⁹ Only required for third party access arrangements using Credit Limits.