

FEDERAL RESERVE BANK  
OF NEW YORK

AT-10876  
September 24, 1996

To All Depository Institutions in the Second Federal Reserve  
District, and Others Maintaining Sets of Board Regulations:

Enclosed is a copy of:

- Regulation E, "Electronic Fund Transfers," effective May 1, 1996;
- Official Staff Commentary on Regulation E, effective May 2, 1996;
- Regulation S, "Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records," effective July 12, 1996; and
- Regulations G, T, U, and X, "Securities Credit Transactions" (with various effective dates).

The revised pamphlets supersede the previous printing of these regulations and any subsequent amendments thereto.

These pamphlets have been punched with an additional hole so that they can be inserted into our two-volume 8-1/2 x 11 size binders.

Circulars Division

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## Securities Credit Transactions

### Regulation G

12 CFR 207; as revised effective October 11, 1991

### Regulation T

12 CFR 220; as revised effective July 1, 1996

### Regulation U

12 CFR 221; as revised effective October 11, 1991

### Regulation X

12 CFR 224; as revised effective January 23, 1984



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

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

August 1996

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# Regulation G

## Securities Credit by Persons Other Than Banks, Brokers, or Dealers

12 CFR 207; as revised effective October 11, 1991

### SECTION 207.1—Authority, Purpose, and Scope

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

(b) *Purpose and scope.*

(1) This part applies to persons other than banks, brokers or dealers, who extend or maintain credit secured directly or indirectly by margin stock and who are required to register with the Board under section 207.3(a) of this part. Credit extended by such persons is regulated by limiting the loan value of the collateral securing the credit, if the purpose of the credit is to buy or carry margin stock.

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

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

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

### SECTION 207.2—Definitions

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

(a) “Affiliate” means any person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the lender.

\* Code of Federal Regulations, title 12, chapter II, part 207.

(b) “Carrying” credit is credit that enables a customer to maintain, reduce, or retire indebtedness originally incurred to purchase a stock that is currently a margin stock.

(c) “Current market value” of—

(1) a security means:

(i) if quotations are available, the closing sale price of the security on the preceding business day, as appearing in any regularly published reporting or quotation service; or

(ii) if there is no closing sale price, the lender may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or

(iii) if the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

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

(d) “Customer” includes any person or persons acting jointly, to or for whom a lender extends or maintains credit.

(e) “Good faith” with respect to—

(1) the loan value of collateral means that amount (not exceeding 100 percent of the current market value of the collateral) which a lender, exercising sound credit judgment, would lend without regard to the customer’s other assets held as collateral in connection with unrelated transactions;

(2) accepting a statement or notice from or on behalf of a customer means that the lender or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to accept the notice or certification without inquiry, investigates and is satisfied that it is truthful.

(f) “Indirectly secured”

(1) includes any arrangement with the customer under which—

- (i) the customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or
- (ii) the exercise of such right is or may be cause for accelerating the maturity of the credit.
- (2) does not include such an arrangement if—
- (i) after applying the proceeds of the credit, not more than 25 percent of the value of the assets subject to the arrangement, as determined by any reasonable method, are margin securities;
- (ii) it is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another creditor that is not an affiliate of the lender;
- (iii) the lender holds the margin stock only in the capacity of custodian, depository, or trustee, or under similar circumstances and, in good faith, has not relied upon the margin stock as collateral; or
- (iv) if the lender, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the credit.
- (g) "In the ordinary course of business" means occurring or reasonably expected to occur in carrying out or furthering any business purpose, or in the case of an individual, in the course of any activity for profit or the management or preservation of property.
- (h) "Lender" means any person subject to the registration requirements of this part.
- (i) "Margin stock" means
- (1) any equity security registered or having unlisted trading privileges on a national securities exchange;
  - (2) any OTC margin stock;
  - (3) any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);
  - (4) any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;
  - (5) any warrant or right to subscribe to or purchase a margin stock; or
  - (6) any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 USC 80a-8), other than—
    - (i) a company licensed under the Small Business Investment Company Act of 1958, as amended (15 USC 661); or
    - (ii) a company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 USC 78c(a)(12)); or
    - (iii) a company which issues face-amount certificates as defined in 15 USC 80a-2(a)(15), but only with respect of such securities.
- (j) "Maximum loan value" is the percentage of current market value assigned by the Board under section 207.7 of this part to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of current market value. All other collateral has good faith loan value except that puts, calls, and combinations thereof have no loan value.
- (k) "OTC margin stock" means any equity security not traded on a national securities exchange that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an "OTC margin stock" unless it appears on the Board's periodically published list of OTC margin stocks.
- (l) "Purpose credit" is credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying a margin stock.

### SECTION 207.3—General Requirements

- (a) *Registration; termination of registration.*
- (1) Every person who, in the ordinary course of business, extends or maintains credit secured, directly or indirectly, by any margin stock shall register on Federal Reserve Form FR G-1 (OMB No. 7100-0011)



within 30 days after the end of any calendar quarter during which (i) the amount of credit extended equals \$200,000 or more, or (ii) the amount of credit outstanding at any time during that calendar quarter equals \$500,000 or more.

(2) A registered lender may apply to terminate its registration, by filing Federal Reserve Form FR G-2 (OMB No. 7100-0011), if the lender has not, during the preceding six calendar months, had more than \$200,000 of such credit outstanding. Registration shall be deemed terminated when the application is approved by the Board.

(b) *Limitation on extending purpose credit.* No lender, except a plan-lender, as defined in section 207.5(a)(1) of this part, shall extend any purpose credit, secured directly or indirectly by margin stock in an amount that exceeds the maximum loan value of the collateral securing the credit, as set forth in section 207.7 of this part.

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

(1) reduction in the customer's equity resulting from change in market prices;

(2) change in the maximum loan value prescribed by this part; or

(3) change in the status of the security (from nonmargin to margin) securing an existing purpose credit.

(d) *Arranging credit.* No lender may arrange for the extension or maintenance of any credit, except upon the same terms and conditions under which the lender itself may extend or maintain credit under this part except this limitation shall not apply with respect to the arranging by a lender for a bank to extend or maintain credit on margin stock or exempted securities.

(e) *Purpose statement.* Except for credit extended under section 207.5 of this part, whenever a lender extends credit secured directly or indirectly by any margin stock, the lender shall require its customer to execute Form FR G-3 (OMB No. 7100-0018), which shall be signed and accepted by a duly authorized representative of the lender acting in good faith.

(f) *Purpose statement for revolving-credit or multiple-draw agreements.*

(1) If a lender extends credit, secured directly or indirectly by any margin stock, under a revolving-credit or other multiple-draw agreement, Form FR G-3 can either be executed each time a disbursement is made under the agreement, or at the time the credit arrangement is originally established.

(2) If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if the maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed. For any purpose credit disbursed under the agreement, the lender shall obtain and attach to the executed Form FR G-3 a current list of collateral which adequately supports all credit extended under the agreement.

(g) *Single-credit rule.*

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

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

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

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

(h) *Mixed-collateral loans.* A purpose credit

secured in part by margin stock, and in part by other collateral shall be treated as two separate loans, one secured by the margin stock and one by all other collateral. A lender may use a single credit agreement, if it maintains records identifying each portion of the credit and its collateral.

(i) *Withdrawals and substitutions.*

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

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

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

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

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

(l) *Transfers of credit.*

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

- (i) the original credit was extended by a lender in compliance with this part or was extended by a bank in a manner that would have complied with this part;
- (ii) the transfer is not made to evade this part or part 221 of this chapter;
- (iii) the amount of credit is not increased; and

(iv) the collateral for the credit is not changed.

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

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

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

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

(o) *Annual report.* Every registered lender shall, within 30 days following June 30 of every year, file Form FR G-4 (OMB No. 7100-0011).

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

(q) *Lack of notice of NMS security designation.* Failure to treat an NMS security as a margin stock in connection with an extension of credit shall not be deemed a violation of this part if the designation is made between quarterly publications of the Board's list of OTC margin stocks and the lender does not have actual notice of the designation.

### SECTION 207.4—Credit to Broker-Dealers

No lender shall extend or maintain credit secured, directly or indirectly, by any margin stock to a creditor who is subject to part 220 of this chapter except in the following circumstances:

(a) *Emergency loans.* Credit extended in good faith reliance upon a certification from the customer that the credit is essential to meet emergency needs arising from exceptional circumstances. Any collateral for such credit shall have good faith loan value.

(b) *Capital-contribution loans.* Credit that the Board has exempted by order upon a finding that the exemption is necessary or appropriate in the public interest or for the protection of investors, provided the Securities Investor Protection Corporation certifies to the Board that the exemption is appropriate.

### SECTION 207.5—Employee Stock Option, Purchase, and Ownership Plans

#### (a) *Plan-lender; eligible plan.*

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

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

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

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

(2) Credit extended under this section shall be treated separately from credit extended under any other section of this part except sections 207.3(a) and 207.3(o) of this part.

(c) *Credit to ESOPs.* A lender may extend and maintain purpose credit without regard to the provisions of this part, except for sections 207.3(a) and 207.3(o), if such credit is extended to an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code, as amended (26 USC 401).

### SECTION 207.6—Requirements for the List of OTC Margin Stocks

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

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

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

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

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

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

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

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

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not

officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such a stock, as determined by the Board, is at least 500 shares; and

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

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

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

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

(3) The security is registered as specified in paragraph (a)(3) of this section;

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

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

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

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

(c) *Removal from the list of OTC margin stocks.* The Board shall periodically remove from the list any stock that—

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

(2) no longer substantially meets the provisions of paragraph (b) of this section or section 207.2(k).

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

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

#### SECTION 207.7—Supplement: Maximum Loan Value of Margin Stock and Other Collateral

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

(b) *Maximum loan value of nonmargin stock and all other collateral.* The maximum loan value of a nonmargin stock and all other collateral except puts, calls, or combinations thereof is their good faith loan value.

(c) *Maximum loan value of options.* Whether they are margin stock or not, puts, calls, and combinations thereof have no loan value.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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

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

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

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

Name of registrant: \_\_\_\_\_ IRS Identification No. \*

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

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

Street	County	
City	State	ZIP Code

Mailing address, if different from above:

Street		
City	State	ZIP Code

**GENERAL INSTRUCTIONS**

**Who must file:** Section 207.3(a) of Federal Reserve Regulation G requires that FR Form G-1 be completed by every person (other than commercial banks, brokers or dealers) who during any calendar quarter extends a total of \$200,000 or more, or has outstanding a total of \$500,000 or more, in credit secured directly or indirectly, in whole or in part, by collateral that includes any margin stock.

**When and where to file:** The form should be filed in duplicate with the Federal Reserve Bank of the district in which the principal office of subject person is located within 30 days following the end of such quarter in which credit has been extended or is outstanding in accordance with Section 207.3(a). This registration statement will remain in effect until a FR Form G-2 (deregistration statement) is approved by the Board of Governors of the Federal Reserve System.

**What to file:** All persons subject to the registration requirements of Section 207.3(a) should (i) supply the background information specified below; (ii) complete Schedule A; and (iii) submit two copies of a balance sheet, certified by an independent public accountant, for the registrant's latest fiscal year. If the registrant is subject to supervision by a State or Federal regulatory authority, a copy of the latest balance sheet filed with such authority may be used. If neither is available, the registrant should complete Schedule B on page 4.

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

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

**DEFINITIONS**

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

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

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

**In the ordinary course of business:** Occurring or reasonably expected to occur from time to time in the course of any activity of a person for profit or the management and preservation of property or, in the case of a person other than an individual, carrying out or in furtherance of any business purpose.

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

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

**Background Information**

1. Principal lines of business:

2. Registrant is: (check one)

- |  |   |
|--|---|
| <input type="checkbox"/> Sole proprietorship | <input type="checkbox"/> Private investor |
| <input type="checkbox"/> Partnership         | <input type="checkbox"/> Other (specify)  |
| <input type="checkbox"/> Corporation         |   |

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

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

Date: \_\_\_\_\_ Place: \_\_\_\_\_

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone Number (include area code): \_\_\_\_\_

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

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

- |                              |                             |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|------------------------------|-----------------------------|

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

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

- |                              |                             |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|------------------------------|-----------------------------|

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

- |                              |                             |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|------------------------------|-----------------------------|

**Schedule A – Securities Credit**

As of \_\_\_\_\_, 19\_\_\_\_

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

**1. Secured directly by margin stock:**

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

**2. Secured indirectly by margin stock .....**

**3. TOTAL (Purpose Credit) .....**

**B. Other credit (Nonpurpose Loans):**

**1. Secured directly by margin stock:**

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

**2. Secured indirectly by margin stock .....**

**3. TOTAL (Nonpurpose Credit) .....**

I' Total credit outstanding at end of quarter (dollars)			II' Credit extended during quarter (dollars)		
Mil	Thou	Dollars	Mil	Thou	Dollars

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

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

**Schedule B—Balance Sheet**

As of \_\_\_\_\_, 19\_\_\_\_

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

(\$ Thousands)

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

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

**Certification**

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Telephone number (including area code)

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Title

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

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



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

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

This deregistration statement is required by law (16 U.S.C. 76g and 76w; 12 C.F.R. 207).

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

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

**Certificate**

I (We), doing business under the name \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
IRS Identification No. \*

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

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

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

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

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or type name(s) and title(s)

\_\_\_\_\_  
Name of firm

\_\_\_\_\_  
Telephone number (including area code)

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

Honest, accurate, and timely statements are required by law  
(16 U.S.C. §76ff; 18 U.S.C. §1001)

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

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

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

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

and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20561; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0011), Washington, D.C. 20503.

**Officer's Certificate**

I hereby certify that \_\_\_\_\_  
Name of corporation

\_\_\_\_\_  
IRS Identification No.

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

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

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

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

\_\_\_\_\_  
Signature of duly authorized officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone number (including area code)

**Honest, accurate, and timely statements are required by law  
(15 U.S.C. 578ff; 15 U.S.C. 51001)**

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

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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

Name of Lender \_\_\_\_\_

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

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

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

Instructions

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

Part I To be completed by borrower(s)

1. What is the amount of the credit being extended? \_\_\_\_\_
2. Will any part of this credit be used to purchase or carry margin securities?  Yes  No

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

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

Signed: _____		Signed: _____	
Borrower's signature	Date	Borrower's signature	Date
Print or type name		Print or type name	

This form should not be signed if blank.

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

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

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

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

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

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

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

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

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

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

I am a duly authorized representative of the lender and understand that this credit secured by margin stock may be subject to the credit restrictions of Regulation G. I have read this form and any attachments, and I have accepted the customer's statement in Part I in good faith as required by Regulation G<sup>2</sup>; and I certify that to the best of my knowledge and belief, all the information given is true, accurate, and complete.

Signed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Annual Report  
(Federal Reserve Form G-4)

For the year ended June 30, 19 \_\_\_\_\_

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

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

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0011), Washington, D.C. 20503

Name of registrant: \_\_\_\_\_ IRIS Identification No. \_\_\_\_\_

Address of principal office: \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_

State \_\_\_\_\_ ZIP Code \_\_\_\_\_

GENERAL INSTRUCTIONS

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

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

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

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

DEFINITIONS

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

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

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

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

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

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

## Instructions for Completing Schedule of Securities Credit

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

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

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

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

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

## Employee Stock Option, Purchase, and Ownership Plan Credit

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

 Yes

 No

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

 Yes

 No

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

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

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

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

 Yes

 No

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

**Schedule of Securities Credit**

	I <sup>a</sup> Total credit outstanding as of June 30, ____ (dollars)			II <sup>b</sup> Credit extended during reporting period (dollars)		
	Mill	Thou	Dollars	Mill	Thou	Dollars
<b>A. Credit to purchase or carry margin stock (Purpose Loans):</b>						
<b>1. Secured directly by margin stock:</b>						
a. Listed stocks and OTC margin stocks .....						
b. Debt securities convertible into margin stock .....						
c. Mutual funds and other margin stock .....						
<b>2. Secured indirectly by margin stock .....</b>						
<b>3. TOTAL (Purpose Credit) .....</b>						
<b>B. Other credit (Nonpurpose Loans):</b>						
<b>1. Secured directly by margin stock:</b>						
a. Listed stocks and OTC margin stocks .....						
b. Debt securities convertible into margin stock .....						
c. Mutual funds and other margin stock .....						
<b>2. Secured indirectly by margin stock .....</b>						
<b>3. TOTAL (Nonpurpose Credit) .....</b>						

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

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

**Changes in Background Information**

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

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

Yes

No

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

**Certification**

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Telephone number (including area code)

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Title

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

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



# Regulation T

## Credit by Brokers and Dealers

12 CFR 220; as amended effective July 1, 1996

### SECTION 220.1—Authority, Purpose, and Scope

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

#### (b) *Scope.*

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

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

(3) This part does not apply to transactions between a customer and a broker or dealer registered only under section 15C of the act.

(1) in the case of a short call, the underlying asset (or a security immediately convertible into the underlying asset, without the payment of money) is held in or purchased for the account on the same day, and the option premium is held in the account until cash payment for the underlying asset or convertible security is received; or

(2) in the case of a short put, the creditor obtains cash in an amount equal to the exercise price or holds in the account cash equivalents with a current market value at least equal to the exercise price and, except in the case of money market mutual funds, with one year or less to maturity; or

(3) in the case of a short put or short call, the creditor verifies that the appropriate escrow agreement will be delivered to the creditor promptly and the option premium is held in the account until such delivery is made; or

(4) beginning June 1, 1997, any other transaction involving options or warrants in which the customer's risk is limited and all elements of the transaction are subject to contemporaneous exercise if—

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

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

### SECTION 220.2—Definitions

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

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

*Covered option transaction* means—

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

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

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

ling or under common control with the creditor.

*Customer* includes—

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

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

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

*Equity* means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

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

*Examining authority* means—

- (1) the national securities exchange or national securities association of which a creditor is a member; or

- (2) if a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

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

*Foreign margin stock* means a foreign security that is an equity security and that appears on the Board's periodically published list of foreign margin stocks.

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

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

*Good faith margin* means the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

*In or at the money* means, until June 1, 1997, the current market price of the underlying security is not more than one standard exercise interval below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

*In the money* means the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

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

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

*Margin excess* means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in section 220.18 (the supplement).

*Margin security* means—

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

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

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

*Nonmember bank* means a bank that is not a member of the Federal Reserve System.

*Non-U.S.-traded foreign security* means a foreign security that is neither a registered security nor one listed on NASDAQ.

*OTC margin bond* means—

- (1) a debt security not traded on a national securities exchange which meets all of the following requirements:
  - (i) at the time of the original issue, a principal amount of not less than \$25,000,000 of the issue was outstanding;
  - (ii) the issue was registered under section

5 of the Securities Act of 1933 (15 USC 77e) and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the act or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the act; and (iii) at the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or (2) a private pass-through security (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:

- (i) an aggregate principal amount of not less than \$25,000,000 (which may be issued in series) was issued pursuant to a registration statement filed with the SEC under section 5 of the Securities Act of 1933 (15 USC 77e);
- (ii) current reports relating to the issue have been filed with the SEC; and
- (iii) at the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering; or
- (3) a mortgage-related security as defined in section 3(a)(41) of the act; or
- (4) a debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces, states, or cities, or a supranational entity, if at the time of the extension of credit one of the following is rated in one of the two highest rating categories by a nationally recognized statistical rating organization:
  - (i) the issue,
  - (ii) the issuer or guarantor (implicitly), or
  - (iii) other outstanding unsecured long-term debt securities issued or guaranteed by the government or entity; or
- (5) a foreign security that is a nonconvertible debt security that meets all of the following requirements:
  - (i) at the time of original issue, a principal amount of at least \$100,000,000 was outstanding;
  - (ii) at the time of the extension of credit,

the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; and

(iii) at the time of the extension of credit, the issue is rated in one of the two highest rating categories by a nationally recognized statistical rating organization; or

(6) any nonconvertible debt security that meets all of the following requirements:

(i) at the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; and

(ii) at the time of the extension of credit, the issue is rated in one of the four highest rating categories by a nationally recognized statistical rating organization.

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

*Overlying option* means—

(1) a put option purchased or a call option written against a long position in an underlying asset in the specialist record in section 220.12(b); or

(2) a call option purchased or a put option written against a short position in an underlying asset in the specialist record in section 220.12(b).

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

*Permitted offset position* means, in the case of an option in which a specialist makes a market, a position in the underlying asset or other related assets, and in the case of other securities in which a specialist makes a market, a position in options overlying the securities in

which a specialist makes a market, provided the positions qualify as permitted offsets under the rules of the national securities exchange with which the specialist is registered, and further provided all such rules have been approved or amended by the SEC. Until June 1, 1997, permitted offsets are determined by reference to section 220.12(b)(6).

*Purpose credit* means credit for the purpose of—

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

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

*Registered security* means any security that—

(1) is registered on a national securities exchange; or

(2) has unlisted trading privileges on a national securities exchange.

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

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

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

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

*Specialist joint account* means an account which, by written agreement, provides for the commingling of the security positions of the participants and a sharing of profits and losses from the account on some predetermined ratio.

*Underlying asset* means—

- (1) the security or other asset that will be delivered upon exercise of an option; or
- (2) in the case of a cash-settled option, the securities or other assets which comprise the index or other measure from which the option's value is derived.

### SECTION 220.3—General Provisions

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

(b) *Separation of accounts.* Except as provided for in the margin account and the special memorandum account, the requirements of an account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under the regulation, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

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

- (1) reductions in the customer's equity resulting from changes in market prices;
- (2) any security in an account ceasing to be margin or exempted; or
- (3) any change in the margin requirements prescribed under this part.

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

(e) *Receipt of funds or securities.*

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

- (i) cash or any check, draft, or order payable on presentation; or
- (ii) any security with sight draft attached.

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

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action

required by this part when payment or securities are not received on time.

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

(f) *Exchange of securities.*

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

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

(g) *Valuing securities.* The current market value of a security shall be determined as follows:

(1) Throughout the day of the purchase or sale of a security, the creditor shall use the security's total cost of purchase or the net proceeds of its sale including any commissions charged.

(2) At any other time, the creditor shall use the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or cal-

culating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

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

#### SECTION 220.4—Margin Account

##### (a) *Margin transactions.*

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

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

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

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

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

##### (b) *Required margin.*

(1) *Applicability.* The required margin for each long or short position in securities is set forth in section 220.18 (the supplement) and is subject to the following exceptions and special provisions.

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

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

(4) *Stock used as cover.*

(i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (b)(1) of this section as the

amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise price of the short call.

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

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

(7) *Transfer of accounts.*

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

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

(8) *Credit denominated in foreign currency.* A creditor may extend credit denominated in any freely convertible foreign currency.

(9) *Options.* The following provisions are in force until June 1, 1997.

(i) *Margin or cover for options on exempted debt securities, certificates of*

*deposit, stock indices, or securities exchange-traded options on foreign currencies.* The required margin for each transaction involving any short put or short call on an exempted debt security, certificate of deposit, stock index, or foreign currency (if the option is traded on a securities exchange), shall be the amount or position in lieu of margin set forth in section 220.18 (the supplement).

(ii) *Margin for options on equity securities.* The required margin for each transaction involving any short put or short call on an equity security shall be the amount set forth in section 220.18 (the supplement).

(iii) *Cover or positions in lieu of margin.* No margin is required for an option written on an equity security position when the account holds any of the following:

(A) the underlying asset in the case of a short call, or a short position in the underlying asset in the case of a short put;

(B) securities immediately convertible into or exchangeable for the underlying asset without the payment of money in the case of a short call, if the right to convert or exchange does not expire on or before the expiration date of the short call;

(C) an escrow agreement for the underlying security or foreign exchange (in the case of a short call) or cash (in the case of a short put);

(D) a long call on the same number of shares of the same underlying asset if the long call does not expire before the expiration date of the short call, and if the amount (if any), by which the exercise price of the long call exceeds the exercise price of the short call is deposited in the account;

(E) a long put on the same number of shares of the same underlying asset if the long put does not expire before the expiration date of the short put, and if the amount (if any), by which the exercise price of the short put exceeds the exercise price of the long put is deposited in the account;

(F) a warrant to purchase the underly-

ing asset, in the case of a short call, if the warrant does not expire on or before the expiration date of the short call, and if the amount (if any), by which the exercise price of the short call is deposited in the account. A warrant used in lieu of the required margin under this provision shall contribute no equity to the account.

(iv) *Straddles.* When both a short put and a short call are in a margin account on the same number of shares of the same underlying security, the required margin shall be the margin on either the short put or the short call, whichever is greater, plus any unrealized loss on the other option.

(v) *Exclusive designation.* The customer may designate at the time the option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the creditor; or the customer may have a standing agreement with the creditor as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Any security held in the account which serves in lieu of the required margin for a short put or a short call shall be unavailable to support any other option transaction in the account.

(c) *When additional margin is required.*

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

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin secur-

ities, exempted securities, or any combination thereof.

(3) *Time limits.*

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

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

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

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

(e) *Withdrawals of cash or securities.*

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

(i) additional cash or securities are required to be deposited into the account for a transaction on the same or a previous day; or

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

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

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin ac-

count on the day it is payable and withdrawal would not be permitted under paragraph (e) of this section, a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

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

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

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

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

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

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

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

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

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

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

#### SECTION 220.5—Special Memorandum Account

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



transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

- (1) dividend and interest payments;
- (2) cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;
- (3) proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under section 220.4(e); and
- (4) margin excess transferred from the margin account under section 220.4(e)(2).

#### SECTION 220.6—Government Securities Account

In a government securities account, a creditor may effect and finance transactions involving government securities, provided the transaction is not prohibited by section 15C of the act or any rule thereunder.

#### SECTION 220.7—Arbitrage Account

In an arbitrage account a creditor may effect and finance for any customer bona fide arbitrage transactions. For the purpose of this section, the term "bona fide arbitrage" means—

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

#### SECTION 220.8—Cash Account

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

(1) buy for or sell to any customer any security or other asset if—

- (i) there are sufficient funds in the account; or
- (ii) the creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment;

(2) buy from or sell for any customer any security or other asset if—

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

(3) issue, endorse, or guarantee, or sell an option for any customer as part of a covered option transaction; and

(4) use an escrow agreement in lieu of the cash, cash equivalents, or underlying asset position if—

- (i) in the case of a short call or a short put, the creditor is advised by the customer that the required securities, assets, or cash are held by a person authorized to issue an escrow agreement and the creditor independently verifies that the appropriate escrow agreement will be delivered by the person promptly; or
- (ii) in the case of a call issued, endorsed, guaranteed, or sold on the same day the underlying asset is purchased in the account and the underlying asset is to be delivered to a person authorized to issue an escrow agreement, the creditor verifies that the appropriate escrow agreement will be delivered by the person promptly.

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

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

- (i) within one payment period of the date—

(A) any nonexempted security was purchased;

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

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

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

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

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

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

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

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

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

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

disregard any sum due from the customer not exceeding \$1,000.

(c) *90-day freeze.*

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

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

(i) within the period specified in paragraph (b)(1) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

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

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

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

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

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

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

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

**SECTION 220.9—Nonsecurities Credit and Employee Stock Ownership Account**

(a) In a nonsecurities credit account a creditor may—

- (1) effect and carry transactions in commodities;
- (2) effect and carry transactions in foreign exchange;
- (3) extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (b) of this section; and
- (4) extend and maintain credit to employee stock ownership plans without regard to the other sections of this part.

(b) Every extension of credit, except as provided in paragraphs (a)(1) and (a)(2) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board. To accept the customer's statement in good faith, the creditor shall be aware of the circumstances surrounding the extension of credit and shall be satisfied that the statement is truthful.

**SECTION 220.10—Omnibus Account**

(a) In an omnibus account, a creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the act and who gives the creditor written notice that—

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

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

**SECTION 220.11—Broker-Dealer Credit Account**

(a) *Permissible transactions.* In a broker-dealer credit account, a creditor may—

- (1) purchase any security from or sell any security to another creditor or person regulated by a foreign securities authority under a good faith agreement to promptly deliver the security against full payment of the purchase price.
- (2) effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors.
- (3) extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation, or another creditor.
- (4) extend and maintain, with the approval of the appropriate examining authority—

- (i) credit to meet the emergency needs of any creditor; or
- (ii) subordinated credit to another creditor for capital purposes, if the other creditor—

(A) is an affiliated corporation or would not be considered a customer of the lender apart from the subordinated loan; or

(B) will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor, its firm or corporation or an affiliated corporation;

(5) effect transactions for a customer as part of a prime-broker arrangement in conformity with SEC guidelines.

(b) *Affiliated corporations.* For purposes of paragraph (a)(3) and (a)(4) of this section "affiliated corporation" means a corporation all the common stock of which is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation and the affiliation has been approved by the creditor's examining authority.

## SECTION 220.12—Market Functions Account

(a) *Requirements.* In a market functions account, a creditor may effect or finance the transactions of market participants in accordance with the following provisions. A separate record shall be kept for the transactions specified for each category described in paragraphs (b) through (e) of this section. Any position in a separate record shall not be used to meet the requirements of any other category.

### (b) *Specialists.*

(1) *Applicability.* A creditor may clear or finance specialist transactions and permitted offset positions for any specialist, or any specialist joint account, in which all participants, or all participants other than the creditor, are registered as specialists on a national securities exchange that requires regular reports on the use of specialist credit from the registered specialists.

(2) *Required margin.* The required margin for a specialist's transactions shall be—

(i) good faith margin for—

(A) any long or short position in a security in which the specialist makes a market;

(B) any wholly owned margin security or exempted security; or

(C) any permitted offset position;

(ii) the margin prescribed by section 220.18 (the supplement) when a security purchased or sold short in the account does not qualify as a specialist or permitted offset position.

(3) *Additional margin; restriction on "free-riding."*

(i) Except as required by paragraph (b)(4) of this section, the creditor shall issue a margin call on any day when additional margin is required as a result of specialist transactions. The creditor may allow the specialist a maximum of one payment period to satisfy a margin call.

(ii) If a specialist fails to satisfy a margin call within the period specified in paragraph (b)(3) of this section (and the creditor is required to liquidate securities to satisfy the call), the creditor shall be prohibited for a 15-calendar-day period

from extending any further credit to the specialist to finance transactions in non-specialty securities.

(iii) The restriction on "free-riding" shall not apply to—

(A) any specialist on a national securities exchange that has an SEC-approved rule on "free-riding" by specialists; or

(B) the acquisition or liquidation of a permitted offset position.

(4) *Deficit status.* On any day when a specialist's separate record would liquidate to a deficit, the creditor shall not extend any further specialist credit in the account and shall issue a margin call at least as large as the deficit. If the call is not met by noon of the following business day, the creditor shall liquidate positions in the specialist's account.

(5) *Withdrawals.* Withdrawals may be permitted to the extent that the equity exceeds the margin requirements specified in paragraph (b)(2) of this section.

(6) *Permitted offset positions.* Until June 1, 1997, a specialist in options may establish, on a share-for-share basis, a long or short position in the securities underlying the options in which the specialist makes a market, and a specialist in securities other than options may purchase or write options overlying the securities in which the specialist makes a market, if the account holds the following permitted offset positions:

(i) a short option position which is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is "in the money";

(ii) a long option position which is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security which is "in the money";

(iii) a short option position against which an exercise notice was tendered;

(iv) a long option position which was exercised;

(v) a net long position in a security

(other than an option) in which the specialist makes a market; or

(vi) a net short position in a security (other than an option) in which the specialist makes a market.

(c) *Underwriters and distributors.* A creditor may effect or finance for any dealer or group of dealers transactions for the purpose of facilitating the underwriting or distribution of all or a part of an issue of securities with a good faith margin.

(d) *OTC market makers and third-market makers.*

(1) A creditor may clear or finance with a good faith margin, market-making transactions for a creditor who is a registered NASDAQ market maker or a qualified third-market maker as defined in SEC Rule 3b-8 (17 CFR 240.3b-8).

(2) If the credit extended to a market maker ceases to be for the purpose of market making, or the dealer ceases to be a market maker for an issue of securities for which credit was extended, the credit shall be subject to the margin specified in section 220.18 (the supplement).

(e) *Odd-lot dealers.* A creditor may clear and finance odd-lot transactions for any creditor who is registered as an odd-lot dealer on a national securities exchange with a good faith margin.

#### SECTION 220.13—Arranging for Loans by Others

A creditor may arrange for the extension or maintenance of credit to or for any customer by any person, provided the creditor does not willfully arrange credit that violates parts 207, 221, or 224 of this chapter.

#### SECTION 220.14—Clearance of Securities, Options, and Futures

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities di-

rectly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

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

(1) the clearing agency—

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

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

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

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

#### SECTION 220.15—Borrowing by Creditors

(a) *Restrictions on borrowing.* A creditor may not borrow in the ordinary course of business as a broker or dealer using as collateral any registered nonexempted security, except—

(1) from or through a member bank of the Federal Reserve System; or

(2) from any nonmember bank that has filed with the Board an agreement as prescribed in paragraph (b) of this section, which agreement is still in effect; or

(3) from another creditor if the loan is permissible under this part.

(b) *Agreements of nonmember banks.\**

\* Federal Reserve Report K.22, an annual list of nonmember banks that have filed this agreement, and Report  
Continued

(1) A nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the act (see Form FR T-1, T-2).

(2) Any nonmember bank may terminate its agreement if it obtains the written consent of the Board.

#### SECTION 220.16—Borrowing and Lending Securities

(a) Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, cash equivalents, foreign sovereign nonconvertible debt securities that are margin securities, collateral acceptable for borrowings of securities pursuant to SEC Rule 15c3-3 (17 CFR 240.15c3-3), or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form FR T-1, T-2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day. If a creditor reasonably anticipates a short sale, such borrowing may be made up to one standard settlement cycle in advance of trade date.

(b) A creditor may lend non-U.S.-traded foreign securities to a foreign person (or borrow such securities for the purpose of relending them to a foreign person) for any purpose lawful in the country in which they are to be used. Each borrowing shall be secured with collateral having at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

Continued

K.22A, a monthly update, are available from the Board's Publications Services (202-452-3245).

#### SECTION 220.17—Requirements for the List of Marginable OTC Stocks and the List of Foreign Margin Stocks

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

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

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

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

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

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

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

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

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

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

(b) *Requirements for continued inclusion on*

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

- (1) three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;
- (2) the minimum average bid price of such stocks, as determined by the Board, is at least \$2 per share;
- (3) the stock is registered as specified in paragraph (a)(3) of this section;
- (4) daily quotations for both bid and asked prices for the stock are continuously available to the general public;
- (5) the issuer has at least \$1 million of capital, surplus, and undivided profits;
- (6) there are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and
- (7) there continue to be 800 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign margin stock shall be a foreign security deemed to have a "ready market" for purposes of SEC Rule 15c3-1 (17 CFR 240.15c3-1) or meet the following requirements:

- (1) the security is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;
- (2) daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

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

(4) the average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or \$1 million; and

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

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, a foreign margin stock shall be a foreign security deemed to have a "ready market" for purposes of SEC Rule 15c3-1 (17 CFR 240.15c3-1) or meet the following requirements:

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

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

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

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

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

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

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

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or

any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

#### SECTION 220.18—Supplement: Margin Requirements

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

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

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

(c) *Short sale of a nonexempted security, except for a registered nonconvertible debt security or OTC margin bond:* 150 percent of the current market value of the security, or 100 percent of the current market value if a security exchangeable or convertible within 90

calendar days without restriction other than the payment of money into the security sold short is held in the account.

(d) *Short sale of an exempted security, registered nonconvertible debt security, or OTC margin bond:* 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

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

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

(1) in the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association and registered warrants on a securities index or foreign currency, the amount, or other position (except in the case of an option on an equity security until June 1, 1997), specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC; or

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



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

FR T-1, T-2  
OMB No. 7100-0181  
Approval expires July 31, 1998

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

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

This report is required by sections 8 and 23 of the Securities Exchange Act of 1934 (16 U.S.C. 8178h and 78w).

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

and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20561; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0181), Washington, D.C. 20503.

AGREEMENT

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

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

\_\_\_\_\_ ;  
(Indicate state for domestic bank or country for foreign bank)

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

\_\_\_\_\_.

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

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

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

4. That this agreement shall be effective on the date of issuance of the certificate issued by the appropriate Federal Reserve Bank and shall thereafter be binding upon the undersigned until terminated as provided by law.

5. That upon the termination of this agreement it will promptly surrender to the Board of Governors of the Federal Reserve System every certificate which shall have been issued by the said Board or any agent thereof in respect of such agreement.

Executed in duplicate this

\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

(SEAL)

By \_\_\_\_\_  
Authorized officer, agent or partner - indicate title or designation

Print or type name

Attest:

\_\_\_\_\_  
Secretary

**RESOLUTION**

(Inapplicable if qualifying bank is partnership)

Resolved that \_\_\_\_\_, the \_\_\_\_\_  
of \_\_\_\_\_

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

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

**CERTIFICATE**

(Inapplicable if qualifying bank is partnership)

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

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

\_\_\_\_\_  
Date Secretary  
\_\_\_\_\_  
Print or type name

Form T-4—Purpose Statement

FR T-4  
OMB No. 7100-0019  
Approval expires July 31, 1988

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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

\_\_\_\_\_  
Name of Creditor

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

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

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

Instructions

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

Part I To be completed by customer(s)

1. What is the amount of the credit being extended? \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

Signed:

Signed:

\_\_\_\_\_  
Borrower's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Borrower's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or type name

\_\_\_\_\_  
Print or type name

This form should not be signed if blank.

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

**Part II To be completed by creditor**

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

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

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

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

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

**3. Other collateral.**

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

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

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

Signed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

# Regulation U

## Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks

12 CFR 221; as revised effective October 11, 1991

### SECTION 221.1—Authority, Purpose, and Scope

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

(b) *Purpose and scope.* This part imposes credit restrictions upon “banks” (as defined in section 221.2(b) of this part) that extend credit for the purpose of buying or carrying margin stock if the credit is secured directly or indirectly by margin stock. Banks may not extend more than the maximum loan value of the collateral securing such credit, as set by the Board in section 221.8 (the supplement).

### SECTION 221.2—Definitions

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

(a) “Affiliate” means—

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

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

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

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

(i) any subsidiary of a bank;

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

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

(2) “Bank” does not include—

(i) any savings and loan association,

(ii) any credit union,

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

(iv) any member of a national securities exchange.

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

(d) “Current market value” of—

(1) a security means—

(i) if quotations are available, the closing sale price of the security on the preceding business day, as appearing on any regularly published reporting or quotation service; or

(ii) if there is no closing sale price, the bank may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day; or

(iii) if the credit is used to finance the purchase of the security, the total cost of purchase, which may include any commissions charged.

(2) any other collateral means a value determined by any reasonable method in accordance with sound banking practices.

(e) “Customer” includes any person or persons acting jointly, to or for whom a bank extends or maintains credit.

(f) “Good faith” with respect to—

(1) the loan value of collateral, means that amount (not exceeding 100 percent of the current market value of the collateral) which a bank, exercising sound banking judgment, would lend, without regard to the customer’s other assets held as collateral in connection with unrelated transactions;

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

(2) accepting notice or certification from or on behalf of a customer means that the bank or its duly authorized representative is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to accept the notice or certification without inquiry, investigates and is satisfied that it is truthful;

(g) "Indirectly secured"—

(1) includes any arrangement with the customer under which—

- (i) the customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding; or
- (ii) the exercise of such right is or may be cause for accelerating the maturity of the credit.

(2) does not include such an arrangement if—

- (i) after applying the proceeds of the credit, not more than 25 percent of the value (as determined by any reasonable method) of the assets subject to the arrangement is represented by margin stock;
- (ii) it is a lending arrangement that permits accelerating the maturity of the credit as a result of a default or renegotiation of another credit to the customer by another lender that is not an affiliate of the bank;
- (iii) the bank holds the margin stock only in the capacity of custodian, depository, or trustee, or under similar circumstances, and, in good faith, has not relied upon the margin stock as collateral; or
- (iv) the bank, in good faith, has not relied upon the margin stock as collateral in extending or maintaining the particular credit.

(h) "Margin stock" means—

- (1) any equity security registered or having unlisted trading privileges on a national securities exchange;
- (2) any OTC margin stock;
- (3) any OTC security designated as quali-

fied for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(4) any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock;

(5) any warrant or right to subscribe to or purchase a margin stock; or

(6) any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 USC 80a-8), other than—

- (i) a company licensed under the Small Business Investment Act of 1958, as amended (15 USC 661); or
- (ii) a company which has at least 95 percent of its assets continuously invested in exempted securities (as defined in 15 USC 78c(a)(12)); or
- (iii) a company which issues face-amount certificates as defined in 15 USC 80a-2(a)(15), but only with respect of such securities.

(i) "Maximum loan value" is the percentage of current market value assigned by the Board under section 221.8 of this part to specified types of collateral. The maximum loan value of margin stock is stated as a percentage of its current market value. Puts, calls, and combinations thereof have no loan value except for purposes of section 221.5(c)(10) of this part. All other collateral has good faith loan value.

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

(k) "Purpose credit" is any credit for the pur-

pose, whether immediate, incidental, or ultimate, of buying or carrying margin stock.

### SECTION 221.3—General Requirements

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

(1) *Extending credit.* No bank shall extend any purpose credit, secured directly or indirectly by margin stock, in an amount that exceeds the maximum loan value of the collateral securing the credit. The maximum loan value of margin stock (set forth in section 221.8 of this part) is assigned by the Board in terms of a percentage of the current market value of the margin stock. All other collateral has “good faith” loan value, as defined in section 221.2(f) of this part.

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

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

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

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

#### (c) *Purpose statement for revolving-credit or multiple-draw agreements.*

(1) If a bank extends credit, secured directly or indirectly by any margin stock, in an amount exceeding \$100,000, under a re-

volving-credit or other multiple-draw agreement, Form FR U-1 can either be executed each time a disbursement is made under the agreement, or at the time the credit arrangement is originally established.

(2) If a purpose statement executed at the time the credit arrangement is initially made indicates that the purpose is to purchase or carry margin stock, the credit will be deemed in compliance with this part if the maximum loan value of the collateral at least equals the aggregate amount of funds actually disbursed. For any purpose credit disbursed under the agreement, the bank shall obtain and attach to the executed Form FR U-1 a current list of collateral which adequately supports all credit extended under the agreement.

#### (d) *Single-credit rule.*

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

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

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

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

(e) *Mixed-collateral loans.* A purpose credit secured in part by margin stock, and in part by other collateral shall be treated as two separate loans, one secured by margin stock and one by all other collateral. A bank may use a single credit agreement, if it maintains records

identifying each portion of the credit and its collateral.

**(f) *Withdrawals and substitutions.***

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

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

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

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

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

**(i) *Transfers of credit.***

(1) A transfer of a credit between customers or banks or between a bank and a lender subject to part 207 of this chapter shall not be considered a new extension of credit if—

- (i) the original credit was extended by a bank in compliance with this part or by a lender subject to part 207 of this chapter in a manner that would have complied with this part;
- (ii) the transfer is not made to evade this part or part 207 of this chapter;
- (iii) the amount of credit is not increased; and
- (iv) the collateral for the credit is not changed.

(2) Any transfer between customers at the

same bank shall be accompanied by a statement by the transferor customer describing the circumstances giving rise to the transfer and shall be accepted and signed by an officer of the bank acting in good faith. The bank shall keep such statement with its records of the transferee account.

(3) When a transfer is made between banks or between a bank and a lender subject to part 207 of this chapter, the transferee shall obtain a copy of the Form FR U-1 or Form FR G-3 originally filed with the transferor and retain the copy with its records of the transferee account. If no form was originally filed with the transferor, the transferee may accept in good faith a statement from the transferor describing the purpose of the loan and the collateral securing it.

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

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

**(l) *Lack of notice of NMS security designation.*** Failure to treat an NMS security as a margin stock in connection with an extension of credit shall not be deemed a violation of this part if the designation is made between quarterly publications of the Board's list of OTC margin stocks and the bank does not have actual notice of the designation.

#### SECTION 221.4—Agreements of Nonmember Banks

(a) Banks that are not members of the Federal Reserve System shall file an agreement that conforms to the requirements of section 8(a) of the act (see Form T-1 for domestic nonmember banks and Form T-2 for all other nonmember banks) prior to extending any credit secured by any nonexempt security registered on a national securities exchange to persons subject to part 220 of this chapter,



who are borrowing in the ordinary course of business.\*

(b) Any nonmember bank may terminate its agreement upon written notification to the Board.

#### SECTION 221.5—Special-Purpose Loans to Brokers and Dealers

(a) *Special-purpose loans.* A member bank, and a nonmember bank that is in compliance with section 221.4 of this part, may extend and maintain purpose credit to brokers and dealers without regard to the limitations set forth in sections 221.3 and 221.8 of this part, if the credit is for any of the specific purposes and meets the conditions set forth in paragraph (c) of this section.

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

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

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

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

(3) *Loans for securities in transit or transfer.* Credit to finance securities in transit or

surrendered for transfer, if the credit is to be repaid upon completion of the transaction.

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

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

(i) purchase or sale of a security in one market, together with an offsetting sale or purchase of the same security in a different market at nearly the same time as practicable, for the purpose of taking advantage of a difference in prices in the two markets; or

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

(6) *Distribution loans.* Credit to finance the distribution of securities to customers.

(7) *Odd-lot loans.* Credit to finance the odd-lot transactions of a person registered as an odd-lot dealer on a national securities exchange.

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

(9) *Capital-contribution loans.*

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

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

\* Federal Reserve Report K.22, an annual list of nonmember banks that have filed this agreement, and Report K.22A, a monthly update, are available from the Board’s Publications Services (202-452-3245).

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

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

(10) *Loans to specialists.* Credit extended to finance the specialty security and permitted offset positions of members of a national securities exchange who are registered and acting as specialists on the exchange, provided the credit is extended on a good faith loan value basis.

(11) *OTC-market-maker credit.* Credit to a dealer who has given written notice to the bank that it is a "qualified OTC market maker" in an OTC margin security as defined in SEC Rule 3b-8 (17 CFR 240.3b-8) and that the credit will be used solely for the purpose of financing the market-making activity, provided the credit is extended on a good faith loan value basis.

(12) *Third-market maker loans.* Credit to a dealer who has given written notice to the bank that it is a "qualified third-market maker," as defined in SEC Rule 3b-8 (17 CFR 240.3b-8), and that the credit will be used solely for the purpose of financing positions in securities assumed as a "qualified third-market maker," provided the credit is extended on a good faith loan value basis.

(13) *Block-positioner credit.* Credit to a dealer who has given written notice to the bank that it is a "qualified block positioner" for a block of securities, as defined in SEC Rule 3b-8 (17 CFR 240.3b-8), and that the credit will be used to finance a position in that block, provided the credit is extended on a good faith loan value basis.

#### SECTION 221.6—Exempted Transactions

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

- (a) to any bank;
- (b) to any foreign banking institution;
- (c) outside the United States;

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

(e) to any "plan lender" as defined in part 207 of this chapter to finance such a plan, provided the bank has no recourse to any securities purchased pursuant to the plan;

(f) to any customer, other than a broker or dealer, to temporarily finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid in the ordinary course of business upon completion of the transaction;

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

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

#### SECTION 221.7—Requirements for the List of OTC Margin Stocks

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

- (1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;
- (2) The minimum average bid price of such stock, as determined by the Board, is at least \$5 per share;
- (3) The stock is registered under section 12 of the act, is issued by an insurance company subject to section 12(g)(2)(G) of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) no longer substantially meets the provisions of paragraph (b) of this section or section 221.2(j).

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

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

#### SECTION 221.8—Supplement: Maximum Loan Value of Stock and Other Collateral

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

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

(c) *Maximum loan value of options.* Except for purposes of section 221.5(c)(10) of this part, puts, calls, and combinations thereof have no loan value.

Form U-1—Purpose Statement

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

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

Name of Bank \_\_\_\_\_

This report is required by law (16 U.S.C. 1570g and 78w; 12 CFR 221).

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

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

Instructions

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

Part I To be completed by borrower(s)

1. What is the amount of the credit being extended? \_\_\_\_\_
2. Will any part of this credit be used to purchase or carry margin stock?  Yes  No

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

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

Signed:

Signed:

Borrower's signature \_\_\_\_\_ Date \_\_\_\_\_  
Print or type name \_\_\_\_\_

Borrower's signature \_\_\_\_\_ Date \_\_\_\_\_  
Print or type name \_\_\_\_\_

This form should not be signed if blank.

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

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

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

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

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

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

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

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

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

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

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

Signed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

# Regulation X

## Borrowers of Securities Credit

12 CFR 224; as revised effective January 23, 1984

### SECTION 224.1—Authority, Purpose, and Scope

(a) *Authority and purpose.* Regulation X (this part\*) is issued by the Board of Governors of the Federal Reserve System (the Board) under the Securities Exchange Act of 1934, as amended (the act) (15 USC 78a et seq.). This part implements section 7(f) of the act (15 USC 78g(f)), the purpose of which is to require that credit obtained within or outside the United States complies with the limitations of the Board's Margin Regulations G, T, and U (12 CFR 207, 220, and 221, respectively).

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

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

### SECTION 224.2—Definitions

The terms used in this part have the meanings given to them in sections 3(a) and 7(f) of the

act, and in Regulations G, T, and U. Section 7(f) of the act contains the following definitions:

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

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

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

### SECTION 224.3—Margin Regulations to Be Applied by Nonexempted Borrowers

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

- (1) Regulation T (12 CFR 220) if the credit is obtained from a foreign branch of a broker-dealer;
- (2) Regulation U (12 CFR 221) if the credit is obtained from a foreign branch of a bank, except for the requirement of a purpose statement (12 CFR 221.3(b) and (c)); and
- (3) Regulation G (12 CFR 207) if the credit is obtained from any other lender

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

outside the United States, except for the requirement of a purpose statement (12 CFR 207.3(e) and (f)).

(b) *Credit transactions within the United States.* Any borrower who willfully causes credit to be extended in contravention of Regulations G, T, or U, and who, therefore, is not

exempted by section 224.1(b)(1) of this part, must conform the credit to the margin regulation that applies to the lender.

(c) *Inadvertent noncompliance.* No borrower who inadvertently violates this part and who acts to remedy the violation as soon as practicable shall be deemed in violation of this part.



# Securities Exchange Act of 1934

15 USC 78 c-hh; 48 Stat. 881; Pub. L. 73-291 (June 6, 1934)

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

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

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

\* \* \* \* \*

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

(B) The term “member” when used with respect to a registered securities associa-

tion means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules.

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

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

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

\* \* \* \* \*

(8) The term “issuer” means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in

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

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

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

(11) The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Com-

mission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

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

- (i) government securities, as defined in paragraph (42) of this subsection;
- (ii) municipal securities, as defined in paragraph (29) of this subsection;
- (iii) any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian;
- (iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph; and
- (v) such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities".

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

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

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

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

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

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

\* \* \* \* \*

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a

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

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

\* \* \* \* \*

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

\* \* \* \* \*

(23) (A) The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeep-

ing entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this title; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions de-

scribed in paragraph 25(E) of this subsection.

\* \* \* \* \*

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

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

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

(29) The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in Section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103

(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

\* \* \* \* \*

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

\* \* \* \* \*

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

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety

Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located or on one or more parcels of real estate upon which is located one or more commercial structures; and

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

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

For the purpose of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument.

(42) The term "government securities" means—

(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States; (B) securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption

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

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

- (i) that is traded on one or more national securities exchanges; or
- (ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association.

\* \* \* \* \*

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

\* \* \* \* \*

(b) *Power to define technical, trade, accounting, and other terms.* The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this title, consistently with the provisions and purposes of this title.

\* \* \* \* \*

[15 USC 78c. Amended by acts of Aug. 23, 1935 (49 Stat. 704); Aug. 20, 1964 (78 Stat. 565); Dec. 14, 1970 (84 Stat. 1435); Dec. 22, 1970 (84 Stat. 1499); June 4, 1975 (89 Stat. 97); May 21, 1978 (92 Stat. 274); Oct. 13, 1982 (96 Stat. 1409); Aug. 10, 1984 (98 Stat. 1265); Oct. 3, 1984 (98 Stat. 1689); Oct. 28, 1986 (100 Stat. 3214–3216); Dec. 4, 1987 (101 Stat. 1253, 1254); Nov. 19, 1988 (102 Stat. 4681); Aug. 9, 1989 (103 Stat. 441); Oct. 15, 1990 (104 Stat. 952); Nov. 15, 1990 (104 Stat. 2717, 2718); Dec. 17, 1993 (107 Stat. 2350, 2352); and Sept. 23, 1994 (108 Stat. 2198, 2241). Acts of June 25, 1959 (73 Stat. 142) and July 12, 1960 (74 Stat. 412) deleted the words “Alaska” and

“Hawaii,” respectively, from paragraph (16). The words “Philippine Islands” were deleted from the definition of “State” in paragraph (16) under authority of Proc. No. 2695, effective July 4, 1946, which recognized the independence of the Philippine Islands. The proclamation is set out as a note under 22 USC 1394.]

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

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

\* \* \* \* \*

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

**SECTION 7—Margin Requirements (15 USC 78g)**

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

(1) 55 per centum of the current market price of the security, or

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

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

(b) *Lower and higher margin requirements.* Notwithstanding the provisions of subsection (a) of this section, the Board of Governors of the Federal Reserve System, may, from time to time, with respect to all or specified securities or transactions, or classes of securities, or classes of transactions, by such rules and regulations (1) prescribe such lower margin requirements for the initial extension or maintenance of credit as it deems necessary or appropriate for the accommodation of commerce and industry, having due regard to the general credit situation of the country, and (2) prescribe such higher margin requirements for the initial extension or maintenance of credit as it may deem necessary or appropriate to prevent the excessive use of credit to finance transactions in securities.

(c) *Unlawful credit extension to customers.* It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension

or maintenance of credit to or for any customer—

(1) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe under subsections (a) and (b) of this section:

(2) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe (A) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board of Governors of the Federal Reserve System, and (B) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (1) of this subsection.

(d) *Unlawful credit extension in violation of rules and regulations; exception to application of rules, etc.* It shall be unlawful for any person not subject to subsection (c) to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board of Governors of the Federal Reserve System shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply (A) to a loan made by a person not in the ordinary course of his business, (B) to a loan on an exempted security, (C) to a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of a national se-

curities exchange, (D) to a loan by a bank on a security other than an equity security, or (E) to such other loans as the Board of Governors of the Federal Reserve System shall, by such rules and regulations as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder.

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

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

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

(2) For the purposes of this subsection—

(A) The term "United States person" includes a person which is organized or exists under the laws of any State or, in the

case of natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

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

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

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

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



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

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

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

(a) To borrow in the ordinary course of business as a broker or dealer on any security (other than an exempted security) registered on a national securities exchange except (1) from or through a member bank of the Federal Reserve System, (2) from any nonmember bank which shall have filed with the Board of Governors of the Federal Reserve System an agreement, which is still in force and which is in the form prescribed by the Board, undertaking to comply with all provisions of this Act, the Federal Reserve Act, as amended, and the Banking Act of 1933, which are applicable to member banks and which relate to the use of credit to finance transactions in securities, and with such rules and regulations as may be prescribed pursuant to such provisions of law or for the purpose of preventing evasions thereof, or (3) in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe to permit loans between such members and/or brokers and/or dealers, or to permit loans to meet emergency needs. Any such agreement filed with the Board of Governors of the Federal Reserve System shall be subject to termination at any time by order of the Board, after appropriate notice and opportunity for hearing, because of any failure by such bank to comply with the provisions thereof or with such provisions of law or rules or regulations; and, for any willful violation of such agreement, such bank shall be subject to the penalties provided for violations of rules and regulations prescribed under this title. The provisions of sections 21 and 25 of this title shall apply in the case of any such proceeding or order of the Board of Governors of the Federal Reserve System in the

same manner as such provisions apply in the case of proceedings and orders of the Commission. Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security or a small business related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.

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

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

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

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[15 USC 78q. As amended by acts of Aug 23, 1935 (49 Stat. 704); May 27, 1936 (49 Stat. 1379); June 25, 1938

(52 Stat. 1076); June 4, 1975 (89 Stat. 137); Oct. 28, 1986 (100 Stat. 3219); Dec. 4, 1987 (101 Stat. 1257); and Oct. 16, 1990 (104 Stat. 966).]

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

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

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

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

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

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

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

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

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AT-10876

Board of Governors of the Federal Reserve System

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# Regulation E

## Electronic Fund Transfers

12 CFR 205; as amended effective May 1, 1996



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

**July 1996**

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# Regulation E

## Electronic Fund Transfers

12 CFR 205; as amended effective May 1, 1996\*

### SECTION 205.1—Authority and Purpose

(a) *Authority.* The regulation in this part, known as Regulation E, is issued by the Board of Governors of the Federal Reserve System pursuant to the Electronic Fund Transfer Act (15 USC 1693 et seq.). The information-collection requirements have been approved by the Office of Management and Budget under 44 USC 3501 et seq. and have been assigned OMB No. 7100-0200.

(b) *Purpose.* This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers.

### SECTION 205.2—Definitions

For purposes of this regulation, the following definitions apply:

(a) (1) *Access device* means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers;

(2) An access device becomes an "*accepted access device*" when the consumer—

(i) requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;

(ii) requests validation of an access device issued on an unsolicited basis; or

(iii) receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

tution that initially issued the device or a successor.

(b) (1) *Account* means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) The term does not include an account held by a financial institution under a bona fide trust agreement.

(c) *Act* means the Electronic Fund Transfer Act (title IX of the Consumer Credit Protection Act, 15 USC 1693 et seq.).

(d) *Business day* means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

(e) *Consumer* means a natural person.

(f) *Credit* means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(g) *Electronic fund transfer* is defined in section 205.3.

(h) *Electronic terminal* means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.

(i) *Financial institution* means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer or that issues an access device and agrees with a consumer to provide electronic fund transfer services.

(j) *Person* means a natural person or an organization, including a corporation, govern-

\* Reliance on May 1, 1996, revisions optional until January 1, 1997.

ment agency, estate, trust, partnership, proprietorship, cooperative, or association.

(k) *Preauthorized electronic fund transfer* means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(l) *State* means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the above in this paragraph (l).

(m) *Unauthorized electronic fund transfer* means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated—

- (1) by a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;
- (2) with fraudulent intent by the consumer or any person acting in concert with the consumer; or
- (3) by the financial institution or its employee.

### SECTION 205.3—Coverage

(a) *General*. This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of sections 205.10(b), (d), and (e) and 205.13, this part applies to any person.

(b) *Electronic fund transfer*. The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to—

- (1) point-of-sale transfers;
- (2) automated teller machine transfers;
- (3) direct deposits or withdrawals of funds;

- (4) transfers initiated by telephone; and
- (5) transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(c) *Exclusions from coverage*. The term electronic fund transfer does not include:

(1) *Checks*. Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.

(2) *Check guarantee or authorization*. Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account.

(3) *Wire or other similar transfers*. Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) *Securities and commodities transfers*. Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is—

(i) regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(ii) purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission;

or

(iii) held in book-entry form by a Federal Reserve Bank or federal agency.

(5) *Automatic transfers by account-holding institutions*. Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

(i) between a consumer's accounts within the financial institution;

(ii) from a consumer's account to an account of a member of the consumer's family held in the same financial institution; or

(iii) between a consumer's account and

an account of the financial institution, except that these transfers remain subject to section 205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

(6) *Telephone-initiated transfers.* Any transfer of funds that—

- (i) is initiated by a telephone communication between a consumer and a financial institution making the transfer, and
- (ii) does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

(7) *Small institutions.* Any preauthorized transfer to or from an account if the assets of the account-holding financial institution were \$100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed \$100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed \$100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to section 205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

#### SECTION 205.4—General Disclosure Requirements; Jointly Offered Services

(a) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep. A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

(b) *Additional information; disclosures required by other laws.* A financial institution may include additional information and may combine disclosures required by other laws (such as the Truth in Lending Act (15 USC 1601 et seq.) or the Truth in Savings Act (12 USC 4301 et seq.)) with the disclosures required by this part.

(c) [Reserved]

(d) *Multiple accounts and account holders.*

(1) *Multiple accounts.* A financial institution may combine the required disclosures into a single statement for a consumer who holds more than one account at the institution.

(2) *Multiple account holders.* For joint accounts held by two or more consumers, a financial institution need provide only one set of the required disclosures and may provide them to any of the account holders.

(e) *Services offered jointly.* Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this part imposes on any or all of them. An institution need make only the disclosures required by sections 205.7 and 205.8 that are within its knowledge and within the purview of its relationship with the consumer for whom it holds an account.

#### SECTION 205.5—Issuance of Access Devices

(a) *Solicited issuance.* Except as provided in paragraph (b) of this section, a financial institution may issue an access device to a consumer only—

- (1) in response to an oral or written request for the device; or
- (2) as a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

(b) *Unsolicited issuance.* A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is—

- (1) not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;
- (2) accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;
- (3) accompanied by the disclosures required by section 205.7, of the consumer's rights and liabilities that will apply if the access device is validated; and



(4) validated only in response to the consumer's oral or written request for validation, after the institution has verified the consumer's identity by a reasonable means.

#### SECTION 205.6—Liability of Consumer for Unauthorized Transfers

(a) *Conditions for liability.* A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by section 205.7(b)(1), (2), and (3). If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

(b) *Limitations on amount of liability.* A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

(1) *Timely notice given.* If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$50 or the amount of unauthorized transfers that occur before notice to the financial institution.

(2) *Timely notice not given.* If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$500 or the sum of—

(i) \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) the amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.

(3) *Periodic statement; timely notice not given.* A consumer must report an unautho-

rized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) *Extension of time limits.* If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) *Notice to financial institution.*

(i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not a particular employee or agent of the institution actually receives the information.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made.

(6) *Liability under state law or agreement.* If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or agreement.

**SECTION 205.7—Initial Disclosures**

(a) *Timing of disclosures.* A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

(b) *Content of disclosures.* A financial institution shall provide the following disclosures, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under section 205.6 or under state or other applicable law or agreement, for unauthorized electronic fund transfers.

(2) *Telephone number and address.* The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) *Business days.* The financial institution's business days.

(4) *Types of transfer; limitations.* The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. Details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) *Fees.* Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(6) *Documentation.* A summary of the consumer's right to receipts and periodic statements, as provided in section 205.9, and notices regarding preauthorized transfers as provided in sections 205.10(a) and 205.10(d).

(7) *Stop payment.* A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in section 205.10(c).

(8) *Liability of institution.* A summary of the financial institution's liability to the consumer under section 910 of the act for failure to make or to stop certain transfers.

(9) *Confidentiality.* The circumstances under which, in the ordinary course of busi-

ness, the financial institution may provide information concerning the consumer's account to third parties.

(10) *Error resolution.* A notice that is substantially similar to Model Form A-3 as set out in appendix A of this part concerning error resolution.

**SECTION 205.8—Change-in-Terms Notice; Error-Resolution Notice**

(a) *Change-in-terms notice.*

(1) *Prior notice required.* A financial institution shall mail or deliver a written notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under section 205.7(b) if the change would result in—

- (i) increased fees for the consumer;
- (ii) increased liability for the consumer;
- (iii) fewer types of available electronic fund transfers; or
- (iv) stricter limitations on the frequency or dollar amount of transfers.

(2) *Prior-notice exception.* A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the institution makes such a change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

(b) *Error-resolution notice.* For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, an error-resolution notice substantially similar to the model form set forth in appendix A of this part (Model Form A-3). Alternatively, an institution may include an abbreviated notice substantially similar to the model form error-resolution notice set forth in appendix A of this part (Model Form A-3), on or with each periodic statement required by section 205.9(b).

### SECTION 205.9—Receipts at Electronic Terminals; Periodic Statements

(a) *Receipts at electronic terminals.* A financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

(1) *Amount.* The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

(2) *Date.* The date the consumer initiates the transfer.

(3) *Type.* The type of transfer and the type of the consumer's account(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.

(4) *Identification.* A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph (a)(4).

(5) *Terminal location.* The location of the terminal where the transfer is initiated, or an identification such as a code or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it shall include the city and state or foreign country and one of the following:

- (i) the street address; or
- (ii) a generally accepted name for the specific location; or
- (iii) the name of the owner or operator of the terminal if other than the account-holding institution.

(6) *Third party transfer.* The name of any third party to or from whom funds are transferred.

(b) *Periodic statements.* For an account to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred and shall send a periodic statement at least quarterly if no transfer has occurred. The

statement shall set forth the following information, as applicable:

(1) *Transaction information.* For each electronic fund transfer occurring during the cycle—

- (i) the amount of the transfer;
- (ii) the date the transfer was credited or debited to the consumer's account;
- (iii) the type of transfer and type of account to or from which funds were transferred;
- (iv) for a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in paragraph (a)(5) of this section; and
- (v) the name of any third party to or from whom funds were transferred.

(2) *Account number.* The number of the account.

(3) *Fees.* The amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance.

(4) *Account balances.* The balance in the account at the beginning and at the close of the statement period.

(5) *Address and telephone number for inquiries.* The address and telephone number to be used for inquiries or notice of errors, preceded by "Direct inquiries to" or similar language. The address and telephone number provided on an error-resolution notice under section 205.8(b) given on or with the statement satisfies this requirement.

(6) *Telephone number for preauthorized transfers.* A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option under section 205.10(a)(1)(iii).

(c) *Exceptions to the periodic-statement requirement for certain accounts—*

(1) *Preauthorized transfers to accounts.* For accounts that may be accessed only by preauthorized transfers to the account the following rules apply:

- (i) *Passbook accounts.* For passbook ac-

counts, the financial institution need not provide a periodic statement if the institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(ii) *Other accounts.* For accounts other than passbook accounts, the financial institution must send a periodic statement at least quarterly.

(2) *Intra-institutional transfers.* For an electronic fund transfer initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the periodic statement requirement.

(3) *Relationship between paragraphs (c)(1) and (c)(2) of this section.* An account that is accessed by preauthorized transfers to the account described in paragraph (c)(1) of this section and by intra-institutional transfers described in paragraph (c)(2) of this section, but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1) of this section.

(d) *Documentation for foreign-initiated transfers.* The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this part if—

(1) the transfer is not initiated within a state; and

(2) the financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with section 205.11.

## SECTION 205.10—Preauthorized Transfers

(a) *Preauthorized transfers to consumer's account.*

(1) *Notice by financial institution.* When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding financial institution shall provide notice to the consumer by—

(i) *Positive notice.* Providing oral or written notice of the transfer within two business days after the transfer occurs; or

(ii) *Negative notice.* Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) *Readily available telephone line.* Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

(2) *Notice by payor.* A financial institution need not provide notice of a transfer if the payor gives the consumer positive notice that the transfer has been initiated.

(3) *Crediting.* A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the date the funds for the transfer are received.

(b) *Written authorization for preauthorized transfers from consumer's account.*

Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

(c) *Consumer's right to stop payment.*

(1) *Notice.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.

(2) *Written confirmation.* The financial institution may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding af-

ter 14 days if the consumer fails to provide the required written confirmation.

(d) *Notice of transfers varying in amount.*

(1) *Notice.* When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution shall send the consumer written notice of the amount and date of the transfer at least 10 days before the scheduled date of transfer.

(2) *Range.* The designated payee or the institution shall inform the consumer of the right to receive notice of all varying transfers, but may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

(e) *Compulsory use.*

(1) *Credit.* No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.

(2) *Employment or government benefit.* No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.

## SECTION 205.11—Procedures for Resolving Errors

(a) *Definition of error.*

(1) *Types of transfers or inquiries covered.* The term *error* means—

- (i) an unauthorized electronic fund transfer;
- (ii) an incorrect electronic fund transfer to or from the consumer's account;
- (iii) the omission of an electronic fund transfer from a periodic statement;

(iv) a computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(v) the consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) an electronic fund transfer not identified in accordance with section 205.9 or 205.10(a) of Regulation E; or

(vii) the consumer's request for documentation required by section 205.9 or 205.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section.

(2) *Types of inquiries not covered.* The term *error* does not include—

- (i) a routine inquiry about the consumer's account balance;
- (ii) a request for information for tax or other recordkeeping purposes; or
- (iii) a request for duplicate copies of documentation.

(b) *Notice of error from consumer.*

(1) *Timing; contents.* A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that—

(i) is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by section 205.9, on which the alleged error is first reflected;

(ii) enables the institution to identify the consumer's name and account number; and

(iii) indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.

(2) *Written confirmation.* A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation

must be sent when the consumer gives the oral notification.

(3) *Request for documentation or clarifications.* When a notice of error is based on documentation or clarification that the consumer requested under paragraph (a)(1)(vii) of this section, the consumer's notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

(c) *Time limits and extent of investigation.*

(1) *Ten-day period.* A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) *Forty-five day period.* If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of section 205.6(a), the institution may withhold a maximum of \$50 from the amount credited. An institution need not provisionally credit the consumer's account if—

(A) the institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) the alleged error involves an account that is subject to Regulation T (Securities Credit by Brokers and Dealers, 12 CFR 220);

(ii) Informs the consumer, within two

business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation;

(iii) Corrects the error, if any, within one business day after determining that an error occurred; and

(iv) Reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) *Extension of time periods.* The applicable time periods in this paragraph (c)(3) are 20 business days in place of 10 business days, and 90 days in place of 45 days, if a notice of error involves an electronic fund transfer that—

(i) was not initiated within a state; or

(ii) resulted from a point-of-sale debit card transaction.

(4) *Investigation.* With the exception of transfers covered by section 205.14, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if—

(i) the alleged error concerns a transfer to or from a third party; and

(ii) there is no agreement between the institution and the third party for the type of electronic fund transfer involved.

(d) *Procedures if financial institution determines no error or different error occurred.* In addition to following the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the consumer.

(1) *Written explanation.* The institution's report of the results of its investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. Upon request, the institution shall promptly provide copies of the documents.

(2) *Debiting provisional credit.* Upon debit-

ing a provisionally credited amount, the financial institution shall—

- (i) notify the consumer of the date and amount of the debiting;
- (ii) notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after the notification. The institution shall honor items as specified in the notice, but need honor only items that it would have paid if the provisionally credited funds had not been debited.

(e) *Reassertion of error.* A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except in the case of an error asserted by the consumer following receipt of information provided under paragraph (a)(1)(vii) of this section.

#### SECTION 205.12—Relation to Other Laws

(a) *Relation to truth in lending.*

- (1) The Electronic Fund Transfer Act and this part govern—
  - (i) the addition to an accepted credit card, as defined in Regulation Z (12 CFR 226.12(a)(2), footnote 21), of the capability to initiate electronic fund transfers;
  - (ii) the issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; and
  - (iii) a consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act and Regulation Z (12 CFR 226), which prohibit the unsolicited issuance of credit cards, govern—

- (i) the addition of a credit feature to an accepted access device; and
- (ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device.

(b) *Preemption of inconsistent state laws.*

(1) *Inconsistent requirements.* The Board shall determine, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the act and this part preempt state law relating to electronic fund transfers. Only state laws that are inconsistent with the act and this part are preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the act and this part if it is more protective of consumers.

(2) *Standards for determination.* State law is inconsistent with the requirements of the act and this part if it—

- (i) requires or permits a practice or act prohibited by the federal law;
- (ii) provides for consumer liability for unauthorized electronic fund transfers that exceeds the limits imposed by the federal law;
- (iii) allows longer time periods than the federal law for investigating and correcting alleged errors, or does not require the financial institution to credit the consumer's account during an error investigation in accordance with section 205.11(c)(2)(i); or
- (iv) requires initial disclosures, periodic statements, or receipts that are different in content from those required by the federal law except to the extent that the disclosures relate to consumer rights granted by the state law and not by the federal law.

(c) *State exemptions.*

(1) *General rule.* Any state may apply for an exemption from the requirements of the act or this part for any class of electronic fund transfers within the state. The Board shall grant an exemption if it determines that—

(i) under state law, the class of electronic fund transfers is subject to requirements substantially similar to those imposed by the federal law; and

(ii) there is adequate provision for state enforcement.

(2) *Exception.* To assure that the federal and state courts continue to have concurrent jurisdiction and to aid in implementing the act—

(i) no exemption shall extend to the civil liability provisions of section 915 of the act; and

(ii) when the Board grants an exemption, the state law requirements shall constitute the requirements of the federal law for purposes of section 915 of the act, except for state law requirements not imposed by the federal law.

#### SECTION 205.13—Administrative Enforcement; Record Retention

(a) *Enforcement by federal agencies.* Compliance with this part is enforced by the agencies listed in appendix B of this part.

(b) *Record retention.*

(1) Any person subject to the act and this part shall retain evidence of compliance with the requirements imposed by the act and this regulation for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

(2) Any person subject to the act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under sections 910, 915, or 916(a) of the act, shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.

#### SECTION 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

(a) *Provider of electronic fund transfer service.* A person that provides an electronic fund transfer service to a consumer but that does not hold the consumer's account is subject to all requirements of this part if the person—

(1) issues a debit card (or other access device) that the consumer can use to access the consumer's account held by a financial institution; and

(2) has no agreement with the account-holding institution regarding such access.

(b) *Compliance by service provider.* In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) *Disclosures and documentation.* The service provider shall give the disclosures and documentation required by sections 205.7, 205.8, and 205.9 that are within the purview of its relationship with the consumer. The service provider need not furnish the periodic statement required by section 205.9(b) if the following conditions are met:

(i) the debit card (or other access device) issued to the consumer bears the service provider's name and an address or telephone number for making inquiries or giving notice of error;

(ii) the consumer receives a notice concerning use of the debit card that is substantially similar to the notice contained in appendix A of this part;

(iii) the consumer receives, on or with the receipts required by section 205.9(a), the address and telephone number to be used for an inquiry, to give notice of an error, or to report the loss or theft of the debit card;

(iv) the service provider transmits to the account-holding institution the information specified in section 205.9(b)(1), in the format prescribed by the automated clearinghouse system used to clear the fund transfers;

(v) The service provider extends the time period for notice of loss or theft of a



debit card, set forth in section 205.6(b)(1) and (2), from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods for reporting unauthorized transfers or errors, set forth in sections 205.6(b)(3) and 205.11(b)(1)(i), from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

(2) *Error resolution.*

(i) The service provider shall extend by a reasonable time the period in which notice of an error must be received, specified in section 205.11(b)(1)(i), if a delay resulted from an initial attempt by the consumer to notify the account-holding institution.

(ii) The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with section 205.11(c)(2)(ii).

(iii) If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance with section 205.11(c)(2)(i).

(iv) If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with section 205.11(d)(2)(ii). If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

(c) *Compliance by account-holding institution.*

The account-holding institution need not comply with this part of the act and this regulation with respect to electronic fund transfers initiated through the service provider except as follows:

(1) *Documentation.* The account-holding institution shall provide a periodic statement that describes each electronic fund transfer initiated by the consumer with the access

device issued by the service provider. The account-holding institution has no liability for the failure to comply with this requirement if the service provider did not provide the necessary information; and

(2) *Error resolution.* Upon request, the account-holding institution shall provide information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with section 205.11(d)(2)(ii).

### SECTION 205.15—Electronic Fund Transfer of Government Benefits

(a) *Government agency subject to regulation.*

(1) A government agency is deemed to be a financial institution for purposes of the act and regulation if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account. The agency shall comply with all applicable requirements of the act and regulation except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by section 205.9(b) if the agency makes available to the consumer—

(1) the consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry termi-

nal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, in accordance with paragraph (c) of this section, shall comply with the following special rules:

(1) *Initial disclosures.* The agency shall modify the disclosures under section 205.7(b) by disclosing—

(i) *Account balance.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. The agency provides a notice substantially similar to the notice contained in paragraph A-5 in appendix A of this part.

(ii) *Written account history.* A summary of the consumer's right to receive a written account history upon request, in place of the periodic statement required by section 205.7(b)(6), and the telephone number to call to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in paragraph A-5 in appendix A of this part.

(iii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-5 in appendix A of this part, in place of the notice required by section 205.7(b)(10).

(2) *Annual error-resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A-5 in appendix A of this part, in place of the notice required by section 205.8(b).

(3) *Limitations on liability.* For purposes of section 205.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with transmittal

of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency shall comply with the requirements of section 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

#### APPENDIX A—Model Disclosure Clauses and Forms

- A-1 Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))
- A-2 Model Clauses for Initial Disclosures (§ 205.7(b))
- A-3 Model Forms for Error-Resolution Notice (§§ 205.7(b)(10) and 205.8(b))
- A-4 Model Form for Service-Providing Institutions (§ 205.14(b)(1)(ii))
- A-5 Model Forms for Government Agencies (§ 205.15(d)(1) and (2))

#### A-1—Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))

(a) *Accounts using cards.* YOU CANNOT USE THE ENCLOSED CARD TO TRANSFER MONEY INTO OR OUT OF YOUR ACCOUNT UNTIL WE HAVE VALIDATED IT. IF YOU DO NOT WANT TO USE THE CARD, PLEASE (destroy it at once by cutting it in half).

[Financial institution may add validation instructions here.]

(b) *Accounts using codes.* YOU CANNOT USE THE ENCLOSED CODE TO TRANSFER MONEY INTO OR OUT OF YOUR ACCOUNT UNTIL WE HAVE VALIDATED IT. IF YOU DO NOT WANT TO USE THE CODE, PLEASE (destroy this notice at once)

[Financial institution may add validation instructions here.]

## A-2—Model Clauses for Initial Disclosures (§ 205.7(b))

(a) *Consumer liability* (§ 205.7(b)(1)). (Tell us AT ONCE if you believe your (card)(code) has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within two business days, you can lose no more than \$50 if someone used your (card)(code) without your permission.) (If you believe your (card)(code) has been lost or stolen, and you tell us within two business days after you learn of the loss or theft, you can lose no more than \$50 if someone used your (card)(code) without your permission.)

If you do NOT tell us within two business days after you learn of the loss or theft of your (card)(code), and we can prove we could have stopped someone from using your (card)(code) without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(b) *Contact in event of unauthorized transfer* (§ 205.7(b)(2)). If you believe your [card] [code] has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call:

[Telephone number]

or write:

[Name of person or office to be notified]

[Address]

(c) *Business days* (§ 205.7(b)(3)). For purposes of these disclosures, our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

(d) *Transfer types and limitations* (§ 205.7(b)(4)).

(1) *Account access*. You may use your [card] [code] to:

(i) Withdraw cash from your [checking] [or] [savings] account.

(ii) Make deposits to your [checking] [or] [savings] account.

(iii) Transfer funds between your checking and savings accounts whenever you request.

(iv) Pay for purchases at places that have agreed to accept the [card] [code].

(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(2) *Limitations on frequency of transfers*.

(i) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Limitations on dollar amounts of transfers*.

(i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

(ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

(e) *Fees* (§ 205.7(b)(5)).

(1) *Per transfer charge*. We will charge you [insert dollar amount] for each transfer you make using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service].

(2) *Fixed charge*. We will charge you [in-

sert dollar amount] each [insert time period] for our [automated teller machine service] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Average or minimum balance charge.* We will only charge you for using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service] if the [average] [minimum] balance in your [checking account] [savings account] [accounts] falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each [transfer] [insert time period].

(f) *Confidentiality (§ 205.7(b)(9)).* We will disclose information to third parties about your account or the transfers you make:

- (i) Where it is necessary for completing transfers, or
- (ii) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or
- (iii) In order to comply with government agency or court orders, or
- (iv) If you give us your written permission.

(g) *Documentation (§ 205.7(b)(6)).*

(1) *Terminal transfers.* You can get a receipt at the time you make any transfer to or from your account using one of our [automated teller machines] [or] [point-of-sale terminals].

(2) *Preauthorized credits.* If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, (we will let you know if the deposit is [not] made.) [the person or company making the deposit will tell you every time they send us the money] [you can call us at (insert telephone number) to find out whether or not the deposit has been made].

(3) *Periodic statements.* You will get a [monthly] [quarterly] account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(4) *Passbook account where the only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your ac-

count since the last time you brought in your passbook.

(h) *Preauthorized payments (§ 205.7(b)(6), (7), and (8); § 205.10(d)).*

(1) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request three business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you [insert amount] for each stop-payment order you give.)

(2) *Notice of varying amounts.* If these regular payments may vary in amount, [we] [the person you are going to pay] will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(3) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments three business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

(i) *Financial institution's liability (§ 205.7(b)(8)).* If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

(1) If, through no fault of ours, you do not have enough money in your account to make the transfer.

(2) If the transfer would go over the credit limit on your overdraft line.

(3) If the automated teller machine where you are making the transfer does not have enough cash.

(4) If the [terminal] [system] was not work-

ing properly and you knew about the breakdown when you started the transfer.

(5) If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.

(6) There may be other exceptions stated in our agreement with you.

### A-3—Model Forms for Error-Resolution Notice (§§ 205.7(b)(10) and 205.8(b)).

#### (a) *Initial and annual error-resolution notice (§§ 205.7(b)(10) and 205.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert telephone number]  
or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within

10 business days, we may not credit your account.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

#### (b) *Error-resolution notice on periodic statements (§ 205.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert telephone number]  
or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

### A-4—Model Form for Service-Providing Institutions (§ 205.14(b)(1)(ii))

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER) AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.

We will not send you a periodic statement listing transactions that you make using your [name of card] card. The transactions will appear only on the statement issued by your bank or other financial institution. **SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR [NAME OF CARD] CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION.** If you have any questions about one of these transactions, call or write us at [telephone number and address] [the telephone number and address indicated below].

**IF YOUR [NAME OF CARD] CARD IS LOST OR STOLEN, NOTIFY US AT ONCE** by calling or writing to us at [telephone number and address].

#### A-5—MODEL FORMS FOR GOVERNMENT AGENCIES (§ 205.15(d)(I)(i) and (ii))

(1) *Disclosure by government agencies of information about obtaining account balances and account histories § 205.15(d)(1)(i) and (ii).*

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)][when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

(2) *Disclosure of error-resolution procedures for government agencies that do not provide periodic statements (§ 205.15(d)(1)(iii) and (d)(2)).*

**In Case of Errors or Questions About Your Electronic Transfers**

Telephone us at [telephone number]

or

Write us at [address]

as soon as you can, if you think an error has occurred in your [EBT] [agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

Your name and [case] [file] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days. We will generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above 20 business days instead of 10 business days.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number][the telephone number shown above].

#### APPENDIX B—Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation E for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency. Terms that are not defined in the Federal Deposit Insurance Act (12 USC 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 USC 3101).

*National banks, and federal branches and federal agencies of foreign banks*

District office of the Office of the Comptroller of the Currency where the institution is located

*State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act*

Federal Reserve Bank serving the District in which the institution is located

*Nonmember insured banks and insured state branches of foreign banks*

Federal Deposit Insurance Corporation regional director for the region in which the institution is located

*Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).*

Office of Thrift Supervision regional director for the region in which the institution is located

*Federal credit unions*

Division of Consumer Affairs  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

*Air carriers*

Assistant General Counsel for  
Aviation Enforcement and Proceedings  
Department of Transportation

18

400 Seventh Street, S.W.  
Washington, D.C. 20590

*Brokers and dealers*

Division of Market Regulation  
Securities and Exchange Commission  
Washington, D.C. 20549

*Retailers, consumer finance companies, certain other financial institutions, and all others not covered above*

Federal Trade Commission  
Electronic Fund Transfers  
Washington, D.C. 20580

APPENDIX C—Issuance of Staff Interpretations

*Official Staff Interpretations*

Pursuant to section 915(d) of the act, the Board has designated the director and other officials of the Division of Consumer and Community Affairs as officials “duly authorized” to issue, at their discretion, official staff interpretations of this part. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to this part, which will be amended periodically.

*Requests for Issuance of Official Staff Interpretations*

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

*Scope of Interpretations*

No staff interpretations will be issued approving financial institutions’ forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

# Electronic Fund Transfer Act

15 USC 1693 et seq.; 92 Stat. 3728; Pub. L. 95-630, Financial Institutions Regulatory and Interest Rate Control Act, Title XX (November 10, 1978)

## SECTION 901—Short Title

This title may be cited as the “Electronic Fund Transfer Act”.

[15 USC 1693 note.]

## SECTION 902—Findings and Purpose

(a) The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) It is the purpose of this title to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this title, however, is the provision of individual consumer rights.

[15 USC 1693.]

## SECTION 903—Definitions

As used in this title—

(1) the term “accepted card or other means of access” means a card, code, or other means of access to a consumer’s account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term “account” means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Board, estab-

lished primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a *bona fide* trust agreement;

(3) the term “Board” means the Board of Governors of the Federal Reserve System;

(4) the term “business day” means any day on which the offices of the consumer’s financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(5) the term “consumer” means a natural person;

(6) the term “electronic fund transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer’s account;

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a con-



sumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated; as determined under regulations of the Board;

(7) the term "electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(8) the term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(11) the term "unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with

fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

[15 USC 1693a.]

## SECTION 904—Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. In prescribing such regulations, the Board shall:

(1) consult with the other agencies referred to in section 917 and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2) prepare an analysis of economic impact which considers the cost and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3) to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4) any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

(b) The Board shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 905 and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5, United States Code. With respect to the disclosures required by section 905(a)(3) and (4), the Board shall take account of variations in the services and

charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

(c) Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Board shall by regulation modify the requirements imposed by this title on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this title.

(d) In the event that electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this title are made applicable to such persons and services.

[15 USC 1693b.]

#### SECTION 905—Terms and Conditions of Transfers

(a) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

(2) the telephone number and address of the person or office to be notified in the event the consumer believes that an unau-

thorized electronic fund transfer has been or may be effected;

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(6) the consumer's right to receive documentation of electronic fund transfers under section 906;

(7) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 908 and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution's liability to the consumer under section 910; and

(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons.

(b) A financial institution shall notify a consumer in writing at least twenty-one days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (a) if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3), the Board shall require subsequent notification if such a change is made permanent.

(c) For any account of a consumer made accessible to electronic fund transfers prior to

the effective date of this title, the information required to be disclosed to the consumer under subsection (a) shall be disclosed not later than the earlier of—

- (1) the first periodic statement required by section 906(c) after the effective date of this title; or
- (2) thirty days after the effective date of this title.

[15 USC 1693c.]

#### SECTION 906—Documentation of Transfers; Periodic Statements

(a) For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable—

- (1) the amount involved and date the transfer is initiated;
- (2) the type of transfer;
- (3) the identity of the consumer's account with the financial institution from which or to which funds are transferred;
- (4) the identity of any third party to whom or from whom funds are transferred; and
- (5) the location or identification of the electronic terminal involved.

(b) For a consumer's account which is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Board. The means of notice elected shall be disclosed to the consumer in accordance with section 905.

(c) A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund trans-

fer. Except as provided in subsections (d) and (e), such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth—

- (1) with regard to each electronic fund transfer during the period, the information described in subsection (a), which may be provided on an accompanying document;
- (2) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;
- (3) the balances in the consumer's account at the beginning of the period and at the close of the period; and
- (4) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such address and telephone number shall be preceded by the caption "Direct Inquiries To:" or other similar language indicating that the address and number are to be used for such inquiries or notices.

(d) In the case of a consumer's passbook account which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, a financial institution may, in lieu of complying with the requirements of subsection (c), upon presentation of the passbook provide the consumer in writing with the amount and date of each such transfer involving the account since the passbook was last presented.

(e) In the case of a consumer's account other than a passbook account, which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, the financial institution may provide a periodic statement on a quarterly basis which otherwise complies with the requirements of subsection (c).

(f) In any action involving a consumer, any documentation required by this section to be given to the consumer which indicates that an

electronic fund transfer was made to another person shall be admissible as evidence of such transfer and shall constitute *prima facie* proof that such transfer was made.

[15 USC 1693d.]

### SECTION 907—Preauthorized Transfers

(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(b) In the case of preauthorized transfers from a consumer's account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Board, of the amount to be transferred and the scheduled date of the transfer.

[15 USC 1693e.]

### SECTION 908—Error Resolution

(a) If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 906 (a), (c), or (d) or notification pursuant to section 906(b), receives oral or written notice in which the consumer—

(1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;

(2) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to section 906(b), the con-

sumer's account, contains an error and the amount of such error; and

(3) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred, the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c), nor shall the financial institution be liable under subsection (e) if the written confirmation is not received within the ten-day period referred to in the previous sentence.

(b) If the financial institution determines that an error did occur, it shall promptly, but in no event more than one business day after such determination, correct the error, subject to section 909, including the crediting of interest where applicable.

(c) If a financial institution receives notice of an error in the manner and within the time period specified in subsection (a), it may, in lieu of the requirements of subsections (a) and (b), within ten business days after receiving such notice provisionally recredit the consumer's account for the amount alleged to be in error, subject to section 909, including interest where applicable, pending the conclusion of its investigation and its determination of whether an error has occurred. Such investigation shall be concluded not later than forty-five days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

(d) If the financial institution determines after its investigation pursuant to subsection (a) or (c) that an error did not occur, it shall deliver

or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

(e) If in any action under section 915, the court finds that—

(1) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (c), and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a reasonable basis for believing that the consumer's account was not in error; or

(2) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation, then the consumer shall be entitled to treble damages determined under section 915(a)(1).

(f) For the purpose of this section, an error consists of—

(1) an unauthorized electronic fund transfer;

(2) an incorrect electronic fund transfer from or to the consumer's account;

(3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;

(4) a computational error by the financial institution;

(5) the consumer's receipt of an incorrect amount of money from an electronic terminal;

(6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this title; or

(7) any other error described in regulations of the Board.

[15 USC 1693f.]

### SECTION 909—Consumer Liability for Unauthorized Transfers

(a) A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other means of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. In no event, however, shall a consumer's liability for an unauthorized transfer exceed the lesser of—

(1) \$50; or

(2) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty days of transmittal of the statement (or in extenuating circumstances such as extended travel or hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer under section 906. In addition, reimbursement need not be made to the consumer for losses which the financial institution estab-

lishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a longer period which is reasonable under the circumstances), but the consumer's liability under this subsection in any such case may not exceed a total of \$500, or the amount of unauthorized electronic fund transfers which occur following the close of two business days (or such longer period) after the consumer learns of the loss or theft but prior to notice to the financial institution under this subsection, whichever is less.

(b) In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) have been met, and, if the transfer was initiated after the effective date of section 905, that the disclosures required to be made to the consumer under section 905(a) (1) and (2) were in fact made in accordance with such section.

(c) In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit as defined in section 103(e) of this Act pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

(d) Nothing in this section imposes liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution.

(e) Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer.

[15 USC 1693g.]

## SECTION 910—Liability of Financial Institutions

(a) Subject to subsections (b) and (c), a financial institution shall be liable to a consumer for all damages proximately caused by—

(1) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

(A) the consumer's account has insufficient funds;

(B) the funds are subject to legal process or other encumbrance restricting such transfer;

(C) such transfer would exceed an established credit limit;

(D) an electronic terminal has insufficient cash to complete the transaction; or

(E) as otherwise provided in regulations of the Board;

(2) the financial institution's failure to make an electronic fund transfer due to insufficient funds when the financial institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer's account which would have provided sufficient funds to make the transfer, and

(3) the financial institution's failure to stop payment of a preauthorized transfer from a consumer's account when instructed to do so in accordance with the terms and conditions of the account.

(b) A financial institution shall not be liable under subsection (a)(1) or (2) if the financial institution shows by a preponderance of the evidence that its action or failure to act resulted from—

(1) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or

(2) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund trans-

fer or, in the case of a preauthorized transfer, at the time such transfer should have occurred.

(c) In the case of a failure described in subsection (a) which was not intentional and which resulted from a *bona fide* error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved.

[15 USC 1693h.]

### SECTION 911—Issuance of Cards or Other Means of Access

(a) No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

- (1) in response to a request or application therefor; or
- (2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Notwithstanding the provisions of subsection (a), a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

- (1) such card, code, or other means of access is not validated;
- (2) such distribution is accompanied by a complete disclosure, in accordance with section 905, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;
- (3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and
- (4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) For the purpose of subsection (b), a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

[15 USC 1693i.]

### SECTION 912—Suspension of Obligations

If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

[15 USC 1693j.]

### SECTION 913—Compulsory Use of Electronic Fund Transfers

No person may—

- (1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or
- (2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

[15 USC 1693k.]

### SECTION 914—Waiver of Rights

No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this title. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this title or a waiver given in settlement of a dispute or action.

[15 USC 1693 l.]

### SECTION 915—Civil Liability

(a) Except as otherwise provided by this section and section 910, any person who fails to comply with any provision of this title with respect to any consumer, except for an error resolved in accordance with section 908, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2) (A) in the case of an individual action, an amount not less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court,

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance, the nature of such compliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Except as provided in section 910, a person may not be held liable in any action brought under this section for a violation of this title if the person shows by a preponder-

ance of evidence that the violation was not intentional and resulted from a *bona fide* error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) No provision of this section or section 916 imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Board, notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) A person has no liability under this section for any failure to comply with any requirement under this title if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this title, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 910.

(f) On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

[15 USC 1693m.]



## SECTION 916—Criminal Liability

## (a) Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this title or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this title; shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

## (b) Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating \$1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating \$1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within

any one-year period have a value aggregating \$500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or (6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating \$1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(c) As used in this section, the term “debit instrument” means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

[15 USC 1693n.]

## SECTION 917—Administrative Enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act, by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks,

- by the Board of Directors of the Federal Deposit Insurance Corporation;
- (2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;
- (3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.
- (4) the Federal Aviation Act of 1958, by the Civil Aeronautics Board, with respect to any air carrier or foreign air carrier subject to that Act; and
- (5) the Securities Exchange Act of 1934, by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act.

All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

[15 USC 1693o. As amended by acts of Aug. 9, 1989 (103 Stat. 440) and Dec. 19, 1991 (105 Stat. 2301).]

## SECTION 918—Reports to Congress

(a) Not later than twelve months after the effective date of this title and at one-year intervals thereafter, the Board shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Board deems necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with this title is being achieved, and a summary of the enforcement actions taken under section 917 of this title. In such report, the Board shall particularly address the effects of this title on the costs and benefits to financial institutions and consumers, on competition, on the introduction of new technology, on the operations of financial institutions, and on the adequacy of consumer protection.

(b) In the exercise of its functions under this title, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of persons subject to this title.

[15 USC 1693p. As amended by act of Dec. 21, 1982 (96 Stat. 1825).]

## SECTION 919—Relation to State Laws

This title does not annul, alter, or affect the laws of any State relating to electronic fund transfers, except to the extent that those laws are inconsistent with the provisions of this title, and then only to the extent of the inconsistency. A State law is not inconsistent with this title if the protection such law affords any

consumer is greater than the protection afforded by this title. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This title does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

[15 USC 1693q.]

#### SECTION 920—Exemption for State Regulation

The Board shall by regulation exempt from

the requirements of this title any class of electronic fund transfers within any State if the Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

[15 USC 1693r.]

#### SECTION 921—Effective Date

This title takes effect upon the expiration of eighteen months from the date of its enactment, except that sections 909 and 911 take effect upon the expiration of ninety days after the date of enactment.

[15 USC 1693 note.]

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# Regulation S Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

12 CFR 219; as amended, effective July 12, 1996



**Any inquiry relating to Regulation S should be addressed to the Federal Reserve Bank of the District in which the inquiry arises.**

**July 1996**

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# Regulation S Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

12 CFR 219; as amended effective July 12, 1996

## SUBPART A—REIMBURSEMENT TO FINANCIAL INSTITUTIONS FOR PROVIDING FINANCIAL RECORDS

### SECTION 219.1—Authority, Purpose and Scope

This subpart of Regulation S is issued by the Board of Governors of the Federal Reserve System (the Board) under section 1115 of the Right to Financial Privacy Act (the act) (12 USC 3415). It establishes the rates and conditions for reimbursement of reasonably necessary costs directly incurred by financial institutions in assembling or providing customer financial records to a government authority pursuant to the act.

### SECTION 219.2—Definitions

For the purposes of this subpart, the following definitions shall apply:

*Customer* means any person or authorized representative of that person who uses any service of a financial institution, or for whom a financial institution acts or has acted as a fiduciary in relation to an account maintained in the person's name. Customer does not include corporations or partnerships comprised of more than five persons.

*Financial institution* means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumer Credit Protection Act (15 USC 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

*Financial record* means an original or copy of, or information known to have been derived from, any record held by a financial in-

stitution pertaining to a customer's relationship with the financial institution.

*Government authority* means any agency or department of the United States, or any officer, employee, or agent thereof.

*Person* means an individual or a partnership of five or fewer individuals.

### SECTION 219.3—Cost Reimbursement

(a) *Fees payable.* Except as provided in section 219.4, a government authority, or a court issuing an order or subpoena in connection with grand jury proceedings, seeking access to financial records pertaining to a customer shall reimburse the financial institution for reasonably necessary costs directly incurred in searching for, reproducing or transporting books, papers, records, or other data as set forth in this section. The reimbursement schedule for a financial institution is set forth in appendix A to this section. If a financial institution has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution and may be included in the reimbursement.

(b) *Search and processing costs.* (1) Reimbursement of search and processing costs shall cover the total amount of personnel time spent in locating, retrieving, reproducing, and preparing financial records for shipment. Search and processing costs shall not cover analysis of material or legal advice.

(2) If itemized separately, search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the rates specified in appendix A to this section.

(c) *Reproduction costs.* The reimbursement rates for reproduction costs for requested documents are set forth in appendix A to this section. Copies of photographs, films, computer tapes, and other materials not listed in appendix A to this section are reimbursed at actual cost.

(d) *Transportation costs.* Reimbursement for transportation costs shall be for the reasonably necessary costs directly incurred to transport personnel to locate and retrieve the requested information, and to convey such material to the place of examination.

Appendix A to Section  
219.3—Reimbursement Schedule

Reproduction:

Photocopy, per page	\$ .25
Paper copies of microfiche, per frame	\$ .25
Duplicate microfiche, per microfiche	\$ .50
Computer diskette	\$ 5.00

Search and Processing:

Clerical/Technical, hourly rate	\$11.00
Manager/Supervisory, hourly rate	\$17.00

SECTION 219.4—Exceptions

A financial institution is not entitled to reimbursement under this subpart for costs incurred in assembling or providing financial records or information related to:

(a) *Security interests, bankruptcy claims, debt collection.* Any financial records provided as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary.

(b) *Government loan programs.* Financial records that are necessary to permit the appropriate government authority to carry out its responsibilities under a government loan, loan guaranty, or loan insurance program.

(c) *Nonidentifiable information.* Financial records that are not identified with or identified

as being derived from the financial records of a particular customer.

(d) *Financial supervisory agencies.* Financial records disclosed to a financial supervisory agency in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

(e) *Internal Revenue summons.* Financial records disclosed in accordance with procedures authorized by the Internal Revenue Code.

(f) *Federally required reports.* Financial records required to be reported in accordance with any federal statute or rule promulgated thereunder.

(g) *Government civil or criminal litigation.* Financial records sought by a government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the government authority and the customer are parties.

(h) *Administrative agency subpoenas.* Financial records sought by a government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to 5 USC 554, and to which the government authority and the customer are parties.

(i) *Investigation of financial institution or its noncustomer.* Financial records sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at an entity that is not a customer as defined in section 219.2 of this part.

(j) *General Accounting Office requests.* Financial records sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination, or audit directed at a government authority.

(k) *Federal Housing Finance Board requests.* Financial records or information sought by the Federal Housing Finance Board (FHFB) or any of the Federal Home Loan Banks in the exercise of the FHFB's authority to extend credit to financial institutions or others.



(l) *Department of Veterans Affairs.* The disclosure of the name and address of any customer to the Department of Veterans Affairs where such disclosure is necessary to, and used solely for, the proper administration of benefits programs under laws administered by that department.

#### SECTION 219.5—Conditions for Payment

(a) *Direct costs.* Payment shall be made only for costs that are both directly incurred and reasonably necessary to provide requested material. Search and processing, reproduction, and transportation costs shall be considered separately when determining whether the costs are reasonably necessary.

(b) *Compliance with legal process, request, or authorization.* No payment may be made to a financial institution until it satisfactorily complies with the legal process, the formal written request, or the customer authorization. When the legal process or formal written request is withdrawn, or the customer authorization is revoked, or where the customer successfully challenges disclosure to a grand jury or government authority, the financial institution shall be reimbursed for the reasonably necessary costs incurred in assembling the requested financial records prior to the time the financial institution is notified of such event.

(c) *Itemized bill or invoice.* No reimbursement is required unless a financial institution submits an itemized bill or invoice specifically detailing its search and processing, reproduction, and transportation costs. Search and processing time should be billed in 15-minute increments.

#### SECTION 219.6—Payment Procedures

(a) *Notice to submit invoice.* Promptly following a service of legal process or request, the court or government authority shall notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment and shall furnish an address for this purpose.

(b) *Special notice.* If a grand jury or government authority withdraws the legal process or formal written request, or if the customer revokes the authorization, or if the legal process or request has been successfully challenged by the customer, the grand jury or government authority shall promptly notify the financial institution of these facts, and shall also notify the financial institution that it must submit an itemized bill or invoice in order to obtain payment of costs incurred prior to the time the financial institution receives this notice.

#### SUBPART B—RECORDKEEPING AND REPORTING REQUIREMENTS FOR FUNDS TRANSFERS AND TRANSMITTALS OF FUNDS

##### SECTION 219.21—Authority, Purpose and Scope

This subpart of Regulation S is issued by the Board under the authority of section 21(b) of the Federal Deposit Insurance Act (12 USC 1829b), as amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub.L. 102-550, title XV), which authorizes the Board and the secretary of the Treasury jointly to prescribe recordkeeping and reporting requirements for domestic wire transfers by insured depository institutions; and which also required the Board and the Treasury jointly to prescribe recordkeeping and reporting requirements for international wire transfers by insured depository institutions and by nonbank financial institutions. The definitions and recordkeeping and reporting requirements referenced in this subpart are promulgated and administered jointly by the Board and the Treasury and are codified in 31 CFR 103.11 and 103.33(e) and (f). Such recordkeeping and reporting requirements will assist in the prosecution of money-laundering activities and are determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

##### SECTION 219.22—Definitions

The following terms are defined in 31 CFR

103.11 under the joint authority of the Board and the Treasury:

Accept.  
 Beneficiary.  
 Beneficiary's bank.  
 Established customer.  
 Execution date.  
 Funds transfer.  
 Intermediary bank.  
 Intermediary financial institution.  
 Originator.  
 Originator's bank.  
 Payment date.  
 Payment order.  
 Receiving bank.  
 Receiving financial institution.  
 Recipient.  
 Recipient's financial institution.  
 Sender.  
 Transmittal of funds.  
 Transmittal order.  
 Transmittor.  
 Transmittor's financial institution.

#### SECTION 219.23—Recordkeeping and Reporting Requirements

(a) *Domestic and international funds transfers by insured depository institutions.* The Board and the Treasury are authorized to promulgate jointly recordkeeping and reporting requirements for domestic and international funds transfers by insured depository institutions whenever the agencies determine that the maintenance of such records has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. These regula-

tions are codified at 31 CFR 103.33(e). For the purposes of this subpart, the provisions of 31 CFR 103.33(e) apply only to funds transfers by insured depository institutions.

(b) *International transmittals of funds by financial institutions other than insured depository institutions.* The Board and the Treasury are required to promulgate jointly reporting and recordkeeping requirements for international transmittals of funds by financial institutions, including brokers and dealers in securities and businesses that provide money-transmitting services. In prescribing these requirements, the Board and the Treasury take into account the usefulness of these records in criminal, tax, or regulatory investigations or proceedings and the effect the recordkeeping will have on the cost and efficiency of the payment system. These regulations are codified at 31 CFR 103.33(f). For the purposes of this subpart, the provisions of 31 CFR 103.33(f) apply only to international transmittals of funds.

#### SECTION 219.24—Retention Period

All records that are required to be retained by this subpart shall be retained for a period of five years. All these records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record and the amount of time that has expired since the record was made. Any records required to be retained by this subpart shall be made available to the Board upon request.

# Statutory Authority for Regulation S

## RIGHT TO FINANCIAL PRIVACY ACT OF 1978

### SECTION 1115—Cost Reimbursement

(a) Except for records obtained pursuant to section 1103(d) or 1113 (a) through (h), or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this title a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(b) This section shall take effect on October 1, 1979.

[12 USC 3415.]

## FEDERAL DEPOSIT INSURANCE ACT

### SECTION 21—Retention of Records by Insured Depository Institutions

(a) *Congressional findings and declaration of purpose.*

(1) The Congress finds that adequate records maintained by insured depository institutions have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that microfilm or other reproductions and other records made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

(2) It is the purpose of this section to require the maintenance of appropriate types

of records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(b) *Recordkeeping regulations.*

(1) Where the Secretary of the Treasury (referred to in this section as the "Secretary") determines that the maintenance of appropriate types of records and other evidence by insured depository institutions has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

(2) Whenever the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') determine that the maintenance of records, by insured depository institutions, of payment orders which direct transfers of funds over wholesale funds transfer systems has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, the Secretary and the Board shall jointly prescribe regulations to carry out the purposes of this section with respect to the maintenance of such records.

(3) (A) The Secretary and the Board shall jointly prescribe, after consultation with State banking supervisors, final regulations requiring that insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments maintain such records of payment orders which—

(i) involve international transactions; and

(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues

or redeems money orders, travelers' checks or similar instruments, that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(B) In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider—

(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

(C) Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary or the Board upon request.

(c) *Identity of persons having accounts and persons authorized to act with respect to such accounts; exemptions.* Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b), each insured depository institution shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the insured depository institution and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

(d) *Reproduction of checks, drafts, and other instruments; record of transactions; identity of party.* Each insured depository institution shall make, to the extent that the regulations of the Secretary so require—

(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

(2) a record of each check, draft, or similar instrument received by it for deposit or col-

lection, together with an identification of the party for whose account it is to be deposited or collected, unless the insured depository institution has already made a record of the party's identity pursuant to subsection (c) of this section.

(e) *Identity of persons making reportable currency and foreign transactions.* Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b), whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured depository institution which is required to be reported or recorded under subchapter II of chapter 53 of Title 31, the insured depository institution shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

(f) *Additions to or substitutes for required records.* Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b), in addition to or in lieu of the records and evidence otherwise referred to in this section, each insured depository institution shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

(g) *Retention period.* Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

(h) *Report to Congress by Secretary of the Treasury.* The Secretary shall include in his annual report to the Congress information on his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law.

(i) *Application of provisions to foreign banks.* The provisions of this section shall not apply to any foreign bank except with respect to the

transactions and records of any insured branch of such a bank.

(j) *Civil penalties.*

(1) Any insured depository institution and any director, officer, or employee of an insured depository institution who willfully or through gross negligence violates or any person who willfully causes such a violation, any regulation prescribed under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than \$10,000.

(2) A separate violation of any regulation

prescribed under subsection (b) of this section occurs for each day the violation continues and at each office, branch, or place of business at which such violation occurs.

(3) Any penalty imposed under paragraph (1) shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of Title 31.

[12 USC 1829b. As added by act of Oct. 26, 1970 (84 Stat. 1114) and amended by acts of Sept. 17, 1978 (92 Stat. 620); Nov. 18, 1988 (102 Stat. 4356); Aug. 9, 1989 (103 Stat. 187); Oct. 28, 1992 (106 Stat. 4058, 4059, 4066); and Sept. 23, 1994 (108 Stat. 2290).]

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# Official Staff Commentary on Regulation E Electronic Fund Transfers

As amended effective May 2, 1996



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

August 1996

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# Official Staff Commentary on Regulation E

As amended effective May 2, 1996\*

## SECTION 205.2—Definitions

### 2(a) Access Device

1. *Examples.* The term “access device” includes debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer (EFT) to or from a consumer account. The term does not include magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.

### 2(b) Account

1. *Consumer asset account.* The term “consumer asset account” includes:

- i. Club accounts, such as vacation clubs. In many cases, however, these accounts are exempt from the regulation under section 205.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.
- ii. A retail repurchase agreement (repo), which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

2. Examples of accounts not covered by Regulation E (12 CFR 205) include:

- i. Profit-sharing and pension accounts established under a trust agreement, which are exempt under section 205.2(b)(2).
- ii. Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.
- iii. Accounts for accumulating funds to purchase U.S. savings bonds.

\* Reliance on May 2, 1996, revisions optional until January 1, 1997.

### Paragraph 2(b)(2)

1. *Bona fide trust agreements.* The term “bona fide trust agreement” is not defined by the act or regulation; therefore, financial institutions must look to state or other applicable law for interpretation.

2. *Custodial agreements.* An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of Regulation E.

### 2(d) Business Day

1. *Duration.* A business day includes the entire 24-hour period ending at midnight, and a notice required by the regulation is effective even if given outside normal business hours. The regulation does not require, however, that a financial institution make telephone lines available on a 24-hour basis.

2. *Substantially all business functions.* “Substantially all business functions” include both the public and the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions), but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the business-day standard set by the regulation for reporting lost or stolen access devices, resolving errors, etc.

3. *Short hours.* A financial institution may determine, at its election, whether an abbreviated day is a business day. For example, if an institution engages in substantially all business functions until noon on Saturdays instead of its usual 3:00 p.m. closing, it may consider Saturday a business day.

4. *Telephone line.* If a financial institution makes a telephone line available on Sundays for reporting the loss or theft of an access

device, but performs no other business functions, Sunday is not a business day under the "substantially all business functions" standard.

## 2(h) Electronic Terminal

1. *Point-of-sale (POS) payments initiated by telephone.* Because the term electronic terminal excludes a telephone operated by a consumer, a financial institution need not provide a terminal receipt when—

- i. a consumer uses a debit card at a public telephone to pay for the call;
- ii. a consumer initiates a transfer by a means analogous in function to a telephone, such as by home banking equipment or a facsimile machine.

2. *POS terminals.* A POS terminal that captures data electronically, for debiting or crediting to a consumer's asset account, is an electronic terminal for purposes of Regulation E if a debit card is used to initiate the transaction.

3. *Teller-operated terminals.* A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. However, transfers initiated at such terminals by means of a consumer's access device (using the consumer's PIN, for example) are EFTs and are subject to other requirements of the regulation. If an access device is used only for identification purposes or for determining the account balance, the transfers are not EFTs for purposes of the regulation.

## 2(m) Unauthorized Electronic Fund Transfer

1. *Transfer by institution's employee.* A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.

2. *Authority.* If a consumer furnishes an access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized.

3. *Access device obtained through robbery or fraud.* An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

4. *Forced initiation.* An EFT at an automated teller machine (ATM) is an unauthorized transfer if the consumer has been induced by force to initiate the transfer.

## SECTION 205.3—Coverage

### 3(a) General

1. *Accounts covered.* The requirements of the regulation apply only to an account for which an agreement for EFT services to or from the account has been entered into between—

- i. the consumer and the financial institution (including an account for which an access device has been issued to the consumer, for example);
- ii. the consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

2. *Automated clearinghouse (ACH) membership.* The fact that membership in an ACH requires a financial institution to accept EFTs to accounts at the institution does not make every account of that institution subject to the regulation.

3. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer EFT services to residents of any state, including resident aliens. It covers any account located in the United States through which EFTs are offered to a resident of a state. This is the case whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the EFT services are offered in connection with an account in a state as defined in section 205.2(l).

### 3(b) Electronic Fund Transfer

1. *Fund transfers covered.* The term “electronic fund transfer” includes:

- i. A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for EFTs to or from the account to which the deposit is made.
- ii. A transfer sent via ACH. For example, Social Security benefits under the U.S. Treasury’s direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.
- iii. A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.
- iv. A transfer from the consumer’s account resulting from a debit-card transaction at a merchant location, even if no electronic terminal is involved at the time of the transaction, if the consumer’s asset account is subsequently debited for the amount of the transfer.

2. *Fund transfers not covered.* The term “electronic fund transfer” does not include—

- i. a payment that does not debit or credit a consumer asset account, such as a payroll allotment to a creditor to repay a credit extension (which is deducted from salary);
- ii. a payment made in currency by a consumer to another person at an electronic terminal;
- iii. a preauthorized check drawn by the financial institution on the consumer’s account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.

### 3(c) Exclusions from Coverage

*Paragraph 3(c)(2)—Check Guarantee or Authorization*

1. *Memo posting.* Under a check-guarantee or

check-authorization service, debiting of the consumer’s account occurs when the check or draft is presented for payment. These services are exempt from coverage, even when a temporary hold on the account is memo-posted electronically at the time of authorization.

*Paragraph 3(c)(3)—Wire or Other Similar Transfers*

1. *Fedwire and ACH.* If a financial institution makes a fund transfer to a consumer’s account after receiving funds through Fedwire or a similar network, the transfer by ACH is covered by the regulation even though the Fedwire or network transfer is exempt.

2. *Article 4A.* Financial institutions that offer telephone-initiated Fedwire payments are subject to the requirements of UCC section 4A-202, which encourages verification of Fedwire payment orders pursuant to a security procedure established by agreement between the consumer and the receiving bank. These transfers are not subject to Regulation E and the agreement is not considered a telephone plan if the service is offered separately from a telephone bill-payment or other prearranged plan subject to Regulation E. The Board’s Regulation J (12 CFR 210) specifies the rules applicable to funds handled by Federal Reserve Banks. To ensure that the rules for all fund transfers through Fedwire are consistent, the Board used its preemptive authority under UCC section 4A-107 to determine that subpart B of Regulation J (12 CFR 210), including the provisions of article 4A, applies to all fund transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B of Regulation J (12 CFR 210).

3. *Similar fund transfer systems.* Fund transfer systems that are similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Telex, and transfers made on the books of correspondent banks.

*Paragraph 3(c)(4)—Securities and Commodities Transfers*

1. *Coverage.* The securities exemption applies to securities and commodities that may be

sold by a registered broker-dealer or futures commission merchant, even when the security or commodity itself is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

2. *Example of exempt transfer.* The exemption applies to a transfer involving a transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call.

3. *Examples of nonexempt transfers.* The exemption does not apply to a transfer involving:

- i. A debit card or other access device that accesses a securities or commodities account such as a money market mutual fund and that the consumer uses for purchasing goods or services or for obtaining cash.
- ii. A payment of interest or dividends into the consumer's account (for example, from a brokerage firm or from a Federal Reserve Bank for government securities).

*Paragraph 3(c)(5)—Automatic Transfers by Account-Holding Institution*

1. *Automatic transfers exempted.* The exemption applies to—

- i. electronic debits or credits to consumer accounts for check charges, stop-payment charges, NSF charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events;
- ii. debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer;
- iii. EFTs between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional;
- iv. automatic transfers between a consumer's accounts within the same financial institution, even if the account holders on the two accounts are not identical.

2. *Automatic transfers not exempted.* Trans-

fers between accounts of the consumer at affiliated institutions (such as between a bank and its subsidiary or within a holding company) are not intra-institutional transfers and thus do not qualify for the exemption.

*Paragraph 3(c)(6)—Telephone-Initiated Transfers*

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered only if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. The following do not, by themselves, constitute a written plan or agreement:

- i. a hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer
- ii. a legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of reserve requirements under Regulation D (12 CFR 204)
- iii. an agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument

2. *Examples of covered transfers.* When a written plan or agreement has been entered into, a transfer initiated by a telephone call from a consumer is covered even though—

- i. an employee of the financial institution completes the transfer manually (for example, by means of a debit memo or deposit slip);
- ii. the consumer is required to make a separate request for each transfer;
- iii. the consumer uses the plan infrequently;
- iv. the consumer initiates the transfer via a facsimile machine.

*Paragraph 3(c)(7)—Small Institutions*

1. *Coverage.* This exemption is limited to preauthorized transfers; institutions that offer other EFTs must comply with the applicable sections of the regulation as to such services. The preauthorized transfers remain subject to sections 913, 915, and 916 of the act and sec-

tion 205.10(e), and are therefore exempt from UCC article 4A.

## SECTION 205.4—General Disclosure Requirements; Jointly Offered Services

### 4(a) Form of Disclosures

1. *General.* Although no particular rules govern type size, number of pages, or the relative conspicuousness of various terms, the disclosures must be in a clear and readily understandable written form that the consumer may retain. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.

2. *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

## SECTION 205.5—Issuance of Access Devices

1. *Coverage.* The provisions of this section limit the circumstances under which a financial institution may issue an access device to a consumer. Making an additional account accessible through an existing access device is equivalent to issuing an access device and is subject to the limitations of this section.

### 5(a) Solicited Issuance

#### Paragraph 5(a)(1)

1. *Joint account.* For a joint account, a financial institution may issue an access device to each account holder if the requesting holder specifically authorizes the issuance.

2. *Permissible forms of request.* The request for an access device may be written or oral (for example, in response to a telephone solicitation by a card issuer).

#### Paragraph (5)(a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, a financial institution may not provide additional devices. For example, only one new card and PIN may replace

a card and PIN previously issued. If the replacement device permits either additional or fewer types of electronic fund transfer services, a change-in-terms notice or new disclosures are required.

2. *Renewal or substitution by a successor institution.* A successor institution is an entity that replaces the original financial institution (for example, following a corporate merger or acquisition) or that acquires accounts or assumes the operation of an EFT system.

### 5(b) Unsolicited Issuance

1. *Compliance.* A financial institution may issue an unsolicited access device (such as the combination of a debit card and PIN) if the institution's ATM system has been programmed not to accept the access device until after the consumer requests and the institution validates the device. Merely instructing a consumer not to use an unsolicited debit card and PIN until after the institution verifies the consumer's identity does not comply with the regulation.

2. *PINS.* A financial institution may impose no liability on a consumer for unauthorized transfers involving an unsolicited access device until the device becomes an "accepted access device" under the regulation. A card and PIN combination may be treated as an accepted access device once the consumer has used it to make a transfer.

3. *Functions of PIN.* If an institution issues a PIN at the consumer's request, the issuance may constitute both a way of validating the debit card and the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers).

4. *Verification of identity.* To verify the consumer's identity, a financial institution may use any reasonable means, such as a photograph, fingerprint, personal visit, signature comparison, or personal information about the consumer. However, even if reasonable means were used, if an institution fails to verify correctly the consumer's identity and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

## SECTION 205.6—Liability of Consumer for Unauthorized Transfers

### 6(a) Conditions for Liability

1. *Means of identification.* A financial institution may use various means for identifying the consumer to whom the access device is issued, including but not limited to—

- i. electronic or mechanical confirmation (such as a PIN);
- ii. comparison of the consumer's signature, fingerprint, or photograph.

2. *Multiple users.* When more than one access device is issued for an account, the financial institution may, but need not, provide a separate means to identify each user of the account.

### 6(b) Limitations on Amount of Liability

1. *Application of liability provisions.* There are three possible tiers of consumer liability for unauthorized EFTs, depending on the situation. A consumer may be liable for (1) up to \$50; (2) up to \$500; or (3) an unlimited amount depending on when the unauthorized EFT occurs. More than one tier may apply to a given situation because each corresponds to a different (sometimes overlapping) time period or set of conditions.

2. *Consumer negligence.* Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on a debit card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers. (However, refer to comment 2(m)-2 regarding termination of the authority given by the consumer to another person.)

3. *Limits on liability.* The extent of the consumer's liability is determined solely by the consumer's promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the con-

sumer for an unauthorized transfer than the limits provided in Regulation E.

#### *Paragraph 6(b)(1)—Timely Notice Given*

1. *\$50 limit applies.* The basic liability limit is \$50. For example, the consumer's card is lost or stolen on Monday and the consumer learns of the loss or theft on Wednesday. If the consumer notifies the financial institution within two business days of learning of the loss or theft (by midnight Friday), the consumer's liability is limited to \$50 or the amount of the unauthorized transfers that occurred before notification, whichever is less.

2. *Knowledge of loss or theft of access device.* The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge.

#### *Paragraph 6(b)(2)—Timely Notice Not Given*

1. *\$500 limit applies.* The second tier of liability is \$500. For example, the consumer's card is stolen on Monday and the consumer learns of the theft that same day. The consumer reports the theft on Friday. The \$500 limit applies because the consumer failed to notify the financial institution within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for, however, depends on when the unauthorized transfers take place. In this example, assume a \$100 unauthorized transfer was made on Tuesday and a \$600 unauthorized transfer on Thursday. Because the consumer is liable for the amount of the loss that occurs within the first two business days (but no more than \$50), plus the amount of the unauthorized transfers that occurs after the first two business days and before the consumer gives notice, the consumer's total liability is \$500 (\$50 of the \$100 transfer plus \$450 of the \$600 transfer, in this example). But if \$600 was taken on Tuesday and \$100 on Thursday, the consumer's maximum liability would be \$150 (\$50 of the \$600 plus \$100).

*Paragraph 6(b)(3)—Periodic Statement;  
Timely Notice Not Given*

1. *Unlimited liability applies.* The standard of unlimited liability applies if unauthorized transfers appear on a periodic statement, and may apply in conjunction with the first two tiers of liability. If a periodic statement shows an unauthorized transfer made with a lost or stolen debit card, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent; otherwise, the consumer faces unlimited liability for all unauthorized transfers made after the 60-day period. The consumer's liability for unauthorized transfers before the statement is sent, and up to 60 days following, is determined based on the first two tiers of liability: up to \$50 if the consumer notifies the financial institution within two business days of learning of the loss or theft of the card and up to \$500 if the consumer notifies the institution after two business days of learning of the loss or theft.

2. *Transfers not involving access device.* The first two tiers of liability do not apply to unauthorized transfers from a consumer's account made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the financial institution's transmittal of the periodic statement, the consumer may be liable for any transfers occurring after the close of the 60 days and before notice is given to the institution. For example, a consumer's account is electronically debited for \$200 without the consumer's authorization and by means other than the consumer's access device. If the consumer notifies the institution within 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. However, if in addition to the \$200, the consumer's account is debited for a \$400 unauthorized transfer on the 61st day and the consumer fails to notify the institution of the first unauthorized transfer until the 62nd day, the consumer may be liable for the full \$400.

*Paragraph 6(b)(4)—Extension of Time Limits*

1. *Extenuating circumstances.* Examples of

circumstances that require extension of the notification periods under this section include the consumer's extended travel or hospitalization.

*Paragraph 6(b)(5)—Notice to Financial Institution*

1. *Receipt of notice.* A financial institution is considered to have received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner, even if the consumer notifies the institution but uses an address or telephone number other than the one specified by the institution.

2. *Notice by third party.* Notice to a financial institution by a person acting on the consumer's behalf is considered valid under this section. For example, if a consumer is hospitalized and unable to report the loss or theft of an access device, notice is considered given when someone acting on the consumer's behalf notifies the bank of the loss or theft. A financial institution may require appropriate documentation from the person representing the consumer to establish that the person is acting on the consumer's behalf.

3. *Content of notice.* Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide the account number or the card number in reporting a lost or stolen access device or an unauthorized transfer, the notice effectively limits the consumer's liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.

## SECTION 205.7—Initial Disclosures

### 7(a) Timing of Disclosures

1. *Early disclosures.* Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party who will initiate preauthorized transfers to or from the con-

sumer's account, unless the terms and conditions differ from those that the institution previously disclosed. On the other hand, if an agreement is directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.

2. *Lack of prenotification of direct deposit.* In some instances, before direct deposit of government payments such as Social Security takes place, the consumer and the financial institution both will complete Form 1199A (or a comparable form providing notice to the institution) and the institution can make disclosures at that time. If an institution has not received advance notice that direct deposits are to be made to a consumer's account, the institution must provide the required disclosures as soon as reasonably possible after the first direct deposit is made, unless the institution has previously given disclosures.

3. *Addition of new accounts.* If a consumer opens a new account permitting EFTs at a financial institution, and the consumer already has received Regulation E disclosures for another account at that institution, the institution need only disclose terms and conditions that differ from those previously given.

4. *Addition of EFT services.* If an EFT service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required. The disclosures must be provided when the consumer contracts for the new service or before the first EFT is made using the new service.

5. *Addition of service in interchange systems.* If a financial institution joins an interchange or shared network system (which provides access to terminals operated by other institutions), disclosures are required for additional EFT services not previously available to consumers if the terms and conditions differ from those previously disclosed.

6. *Disclosures covering all EFT services offered.* An institution may provide disclosures covering all EFT services that it offers, even

if some consumers have not arranged to use all services.

## 7(b) Content of Disclosures

### *Paragraph 7(b)(1)—Liability of Consumer*

1. *No liability imposed by financial institution.* If a financial institution chooses to impose zero liability for unauthorized EFTs, it need not provide the liability disclosures. If the institution later decides to impose liability, however, it must first provide the disclosures.

2. *Preauthorized transfers.* If the only EFTs from an account are preauthorized transfers, liability could arise if the consumer fails to report unauthorized transfers reflected on a periodic statement. To impose such liability on the consumer, the institution must have disclosed the potential liability and the telephone number and address for reporting unauthorized transfers.

3. *Additional information.* At the institution's option, the summary of the consumer's liability may include advice on promptly reporting unauthorized transfers or the loss or theft of the access device.

### *Paragraph 7(b)(2)—Telephone Number and Address*

1. *Disclosure of telephone numbers.* An institution may use the same or different telephone numbers in the disclosures for the purpose of—

- i. reporting the loss or theft of an access device or possible unauthorized transfers;
- ii. inquiring about the receipt of a preauthorized credit;
- iii. stopping payment of a preauthorized debit;
- iv. giving notice of an error.

2. *Location of telephone number.* The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as "Call your branch office. The number is shown on your periodic statement." However, an institution must provide a specific telephone number and address, on or with the disclosure statement, for report-



ing a lost or stolen access device or a possible unauthorized transfer.

*Paragraph 7(b)(4)—Types of Transfers; Limitations*

1. *Security limitations.* Information about limitations on the frequency and dollar amount of transfers generally must be disclosed in detail, even if related to security aspects of the system. If the confidentiality of certain details is essential to the security of an account or system, these details may be withheld (but the fact that limitations exist must still be disclosed). For example, an institution limits cash ATM withdrawals to \$100 per day. The institution may disclose that daily withdrawal limitations apply and need not disclose that the limitations may not always be in force (such as during periods when its ATMs are off-line).

2. *Restrictions on certain deposit accounts.* A limitation on account activity that restricts the consumer's ability to make EFTs must be disclosed even if the restriction also applies to transfers made by nonelectronic means. For example, Regulation D (12 CFR 204) restricts the number of payments to third parties that may be made from a money market deposit account; an institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs.

3. *Preauthorized transfers.* Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make.

*Paragraph 7(b)(5)—Fees*

1. *Disclosure of EFT fees.* An institution is required to disclose all fees for EFTs or the right to make them. Other fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed (but see Regulation DD, 12 CFR 230). An institution is not required to disclose fees for inquiries made at an ATM since no transfer of funds is involved.

2. *Fees also applicable to non-EFT.* A per-item fee for EFTs must be disclosed even if the same fee is imposed on nonelectronic

transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document that is referenced in the statement.

3. *Interchange system fees.* Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless they are imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly to the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be disclosed.

*Paragraph 7(b)(9)—Confidentiality*

1. *Information provided to third parties.* An institution must describe the circumstances under which any information relating to an account to or from which EFTs are permitted will be made available to third parties, not just information concerning those EFTs. The term "third parties" includes affiliates such as other subsidiaries of the same holding company.

*Paragraph 7(b)(10)—Error Resolution*

1. *Substantially similar.* The error-resolution notice must be substantially similar to the model form in appendix A of part 205. An institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E.

2. *Exception from provisional crediting.* To take advantage of the longer time periods for resolving errors under section 205.11(c)(3) (for transfers initiated outside the United States, or resulting from POS debit-card transactions), a financial institution must have disclosed these longer time periods. Similarly, an institution that relies on the exception from

provisional crediting in section 205.11(c)(2) for accounts subject to Regulation T (12 CFR 220) must disclose accordingly.

### SECTION 205.8—Change-in-Terms Notice; Error-Resolution Notice

#### 8(a) Change-in-Terms Notice

1. *Form of notice.* No specific form or wording is required for a change-in-terms notice. The notice may appear on a periodic statement, or may be given by sending a copy of a revised disclosure statement, provided attention is directed to the change (for example, in a cover letter referencing the changed term).

2. *Changes not requiring notice.* The following changes do not require disclosure:

- i. closing some of an institution's ATMs
- ii. cancellation of an access device

3. *Limitations on transfers.* When the initial disclosures omit details about limitations because secrecy is essential to the security of the account or system, a subsequent increase in those limitations need not be disclosed if secrecy is still essential. If, however, an institution had no limits in place when the initial disclosures were given and now wishes to impose limits for the first time, it must disclose at least the fact that limits have been adopted. (See also section 205.7(b)(4) and the related commentary.)

4. *Change in telephone number or address.* When a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, a change-in-terms notice is required only if the institution will impose liability on the consumer for unauthorized transfers under section 205.6. (See also section 205.6(a) and the related commentary.)

#### 8(b) Error-Resolution Notice

1. *Change between annual and periodic notice.* If an institution switches from an annual to a periodic notice, or vice versa, the first notice under the new method must be sent no later than 12 months after the last notice sent under the old method.

### SECTION 205.9—Receipts at Electronic Terminals; Periodic Statements

#### 9(a) Receipts at Electronic Terminals

1. *Receipts furnished only on request.* The regulation requires that a receipt be "made available." A financial institution may program its electronic terminals to provide a receipt only to consumers who elect to receive one.

2. *Third party providing receipt.* An account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions.

3. *Inclusion of promotional material.* A financial institution may include promotional material on receipts if the required information is set forth clearly (for example, by separating it from the promotional material). In addition, a consumer may not be required to surrender the receipt or that portion containing the required disclosures in order to take advantage of a promotion.

4. *Transfer not completed.* The receipt requirement does not apply to a transfer that is initiated but not completed (for example, if the ATM is out of currency or the consumer decides not to complete the transfer).

5. *Receipts not furnished due to inadvertent error.* If a receipt is not provided to the consumer because of a bona fide unintentional error, such as when a terminal runs out of paper or the mechanism jams, no violation results if the financial institution maintains procedures reasonably adapted to avoid such occurrences.

6. *Multiple transfers.* If the consumer makes multiple transfers at the same time, the financial institution may document them on a single or on separate receipts.

#### Paragraph 9(a)(1)—Amount

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as consumers are given the option to

cancel the transaction after receiving notice of a fee.

*Paragraph 9(a)(2)—Date*

1. *Calendar date.* The receipt must disclose the calendar date on which the consumer uses the electronic terminal. An accounting or business date may be disclosed in addition if the dates are clearly distinguished.

*Paragraph 9(a)(3)—Type*

1. *Identifying transfer and account.* Examples identifying the type of transfer and the type of the consumer's account include "withdrawal from checking," "transfer from savings to checking," or "payment from savings."

2. *Exception.* Identification of an account is not required when the consumer can access only one asset account at a particular time or terminal, even if the access device can normally be used to access more than one account. For example, the consumer may be able to access only one particular account at terminals not operated by the account-holding institution, or may be able to access only one particular account when the terminal is offline. The exception is available even if, in addition to accessing one asset account, the consumer also can access a credit line.

3. *Access to multiple accounts.* If the consumer can use an access device to make transfers to or from different accounts of the same type, the terminal receipt must specify which account was accessed, such as "withdrawal from checking I" or "withdrawal from checking II." If only one account besides the primary checking account can be debited, the receipt can identify the account as "withdrawal from other account."

4. *Generic descriptions.* Generic descriptions may be used for accounts that are similar in function, such as share draft or NOW accounts and checking accounts. In a shared system, for example, when a credit union member initiates transfers to or from a share draft account at a terminal owned or operated by a bank, the receipt may identify a withdrawal from the account as a "withdrawal from checking."

5. *Point-of-sale transactions.* There is no prescribed terminology for identifying a transfer at a merchant's POS terminal. A transfer may be identified, for example, as a purchase, a sale of goods or services, or a payment to a third party. When a consumer obtains cash from a POS terminal in addition to purchasing goods, or obtains cash only, the documentation need not differentiate the transaction from one involving the purchase of goods.

*Paragraph 9(a)(5)—Terminal Location*

1. *Location code.* A code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.

2. *Omission of city name.* The city may be omitted if the generally accepted name (such as a branch name) contains the city name.

*Paragraph 9(a)(5)(i)*

1. *Street address.* The address should include number and street (or intersection); the number (or intersecting street) may be omitted if the street alone uniquely identifies the terminal location.

*Paragraph 9(a)(5)(ii)*

1. *Generally accepted name.* Examples of a generally accepted name for a specific location include a branch of the financial institution, a shopping center, or an airport.

*Paragraph 9(a)(5)(iii)*

1. *Name of owner or operator of terminal.* Examples of an owner or operator of a terminal are a financial institution or a retail merchant.

*Paragraph 9(a)(5)(iv)*

1. *Omission of a state.* A state may be omitted from the location information on the receipt if—

- i. all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state or
- ii. all transfers occur at terminals located

within 50 miles of the financial institution's main office.

2. *Omission of a city and state.* A city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city.

*Paragraph 9(a)(6)—Third-Party Transfer*

1. *Omission of third-party name.* The receipt need not disclose the third-party name if the name is provided by the consumer in a form that is not machine readable (for example, if the consumer indicates the payee by depositing a payment stub into the ATM). If, on the other hand, the consumer keys in the identity of the payee, the receipt must identify the payee by name or by using a code that is explained elsewhere on the receipt.

2. *Receipt as proof of payment.* Documentation required under the regulation constitutes prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit.

**9(b) Periodic Statements**

1. *Periodic cycles.* Periodic statements may be sent on a cycle that is shorter than monthly. The statements must correspond to periodic cycles that are reasonably equal, that is, do not vary by more than four days from the regular cycle. The requirement of reasonably equal cycles does not apply when an institution changes cycles for operational or other reasons, such as to establish a new statement day or date.

2. *Interim statements.* Generally, a financial institution must provide periodic statements for each monthly cycle in which an EFT occurs, and at least quarterly if a transfer has not occurred. Where EFTs occur between regularly scheduled cycles, interim statements must be provided. For example, if an institution issues quarterly statements at the end of March, June, September, and December, and the consumer initiates an EFT in February, an interim statement for February must be provided. If an interim statement contains interest

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or rate information, the institution must comply with Regulation DD, 12 CFR 230.6.

3. *Inactive accounts.* A financial institution need not send statements to consumers whose accounts are inactive as defined by the institution.

4. *Customer pickup.* A financial institution may permit, but may not require, consumers to call for their periodic statements.

5. *Periodic statements limited to EFT activity.* A financial institution that uses a passbook as the primary means for displaying account activity, but also allows the account to be debited electronically, may provide a periodic statement requirement that reflects only the EFTs and other required disclosures (such as charges, account balances, and address and telephone number for inquiries). (See section 205.9(c)(1)(i) for the exception applicable to preauthorized transfers for passbook accounts.)

6. *Codes and accompanying documents.* To meet the documentation requirements for periodic statements, a financial institution may—

- i. include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;
- ii. enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;
- iii. use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

*Paragraph 9(b)(1)—Transaction Information*

1. *Information obtained from others.* While financial institutions must maintain reasonable procedures to ensure the integrity of data obtained from another institution, a merchant, or other third parties, verification of each transfer that appears on the periodic statement is not required.

*Paragraph 9(b)(1)(i)*

1. *Incorrect deposit amount.* If a financial institution determines that the amount actually deposited at an ATM is different from the

amount entered by the consumer, the institution need not immediately notify the consumer of the discrepancy. The periodic statement reflecting the deposit may show either the correct amount of the deposit or the amount entered by the consumer along with the institution's adjustment.

*Paragraph 9(b)(1)(iii)*

1. *Type of transfer.* There is no prescribed terminology for describing a type of transfer. Placement of the amount of the transfer in the debit or the credit column is sufficient if other information on the statement, such as a terminal location or third-party name, enables the consumer to identify the type of transfer.

*Paragraph 9(b)(1)(iv)*

1. *Nonproprietary terminal in network.* An institution need not reflect on the periodic statement the street addresses, identification codes, or terminal numbers for transfers initiated in a shared or interchange system at a terminal operated by an institution other than the account-holding institution. The statement must, however, specify the entity that owns or operates the terminal, plus the city and state.

*Paragraph 9(b)(1)(v)*

1. *Recurring payments by government agency.* The third-party name for recurring payments from federal, state, or local governments need not list the particular agency. For example, "U.S. gov't" or "N.Y. sal" will suffice.

2. *Consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, the financial institution must identify the recipient by name (not just by an account number, for example).

3. *Terminal location/third party.* A single entry may be used to identify both the terminal location and the name of the third party to or from whom funds are transferred. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as "XYZ Store, Anytown, Ohio."

4. *Account-holding institution as third party.* Transfers to the account-holding institution (by ATM, for example) must show the institution as the recipient, unless other information on the statement (such as, "loan payment from checking") clearly indicates that the payment was to the account-holding institution.

5. *Consistency in third-party identity.* The periodic statement must disclose a third-party name as it appeared on the receipt, whether it was, for example, the "dba" (doing business as) name of the third party or the parent corporation's name.

6. *Third-party identity on deposits at electronic terminal.* A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

*Paragraph 9(b)(3)—Fees*

1. *Disclosure of fees.* The fees disclosed may include fees for EFTs and for other non-electronic services, and both fixed fees and per-item fees; they may be given as a total or may be itemized in part or in full.

2. *Fees in interchange system.* An account-holding institution must disclose any fees it imposes on the consumer for EFTs, including fees for ATM transactions in an interchange or shared ATM system. Fees for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement.

3. *Finance charges.* The requirement to disclose any fees assessed against the account does not include a finance charge imposed on the account during the statement period.

*Paragraph 9(b)(4)—Account Balances*

1. *Opening and closing balances.* The opening and closing balances must reflect both EFTs and other account activity.

*Paragraph 9(b)(5)—Address and Telephone Number for Inquiries*

1. *Telephone number.* A single telephone number, preceded by the “direct inquiries to” language, will satisfy the requirements of section 205.9(b)(5) and (6).

*Paragraph 9(b)(6)—Telephone Number for Preauthorized Transfers*

1. *Telephone number.* See comment 9(b)(5)-1.

9(c) Exceptions to the Periodic Statement Requirements for Certain Accounts

1. *Transfers between accounts.* The regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer’s accounts. The financial institution must still comply with the applicable periodic-statement requirements for any other EFTs to or from the account. For example, a Regulation E statement must be provided quarterly for an account that also receives payroll deposits electronically, or for any month in which an account is also accessed by a withdrawal at an ATM.

9(d) Documentation for Foreign-Initiated Transfers

1. *Foreign-initiated transfers.* An institution must make a good faith effort to provide all required information for foreign-initiated transfers. For example, even if the institution is not able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

SECTION 205.10—Preauthorized Transfers

10(a)—Preauthorized Transfers to Consumer’s Account

*Paragraph 10(a)(1)—Notice by Financial Institution*

1. *Content.* No specific language is required

for notice regarding receipt of a preauthorized transfer. Identifying the deposit is sufficient; however, simply providing the current account balance is not.

2. *Notice of credit.* A financial institution may use different methods of notice for various types or series of preauthorized transfers, and the institution need not offer consumers a choice of notice methods.

3. *Positive notice.* A periodic statement sent within two business days of the scheduled transfer, showing the transfer, can serve as notice of receipt.

4. *Negative notice.* The absence of a deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) will serve as negative notice.

5. *Telephone notice.* If a financial institution uses the telephone-notice option, it should be able in most instances to verify during a consumer’s initial call whether a transfer was received. The institution must respond within two business days to any inquiry not answered immediately.

6. *Phone number for passbook accounts.* The financial institution may use any reasonable means necessary to provide the telephone number to consumers with passbook accounts that can only be accessed by preauthorized credits and that do not receive periodic statements. For example, it may print the telephone number in the passbook or include the number with the annual error-resolution notice.

7. *Telephone line availability.* To satisfy the readily available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

### 10(b) Written Authorization for Preauthorized Transfers from Consumer's Account

1. *Preexisting authorizations.* The financial institution need not require a new authorization before changing from paper-based to electronic debiting when the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting will occur by paper means. A new authorization also is not required when a successor institution begins collecting payments.

2. *Authorization obtained by third party.* The account-holding financial institution does not violate the regulation when a third-party payee fails to obtain the authorization in writing or fails to give a copy to the consumer; rather, it is the third-party payee that is in violation of the regulation.

3. *Written authorization for preauthorized transfers.* The requirement that preauthorized EFTs be authorized by the consumer "only by a writing" cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer. A tape recording of a telephone conversation with a consumer who agrees to preauthorized debits also does not constitute written authorization for purposes of this provision.

4. *Use of confirmation form.* A financial institution or designated payee may comply with the requirements of this section in various ways. For example, a payee may provide the consumer with two copies of a preauthorization form and ask the consumer to sign and return one and to retain the second copy.

5. *Similarly authenticated.* An example of a consumer's authorization that is not in the form of a signed writing but is instead "similarly authenticated" is a consumer's authorization via a home banking system. To satisfy the requirements of this section, there must be some means to identify the consumer (such as a security code) and to make available a paper copy of the authorization (automatically or upon request). The text of the electronic authorization would have to be displayed on a computer screen or other visual display which

enables the consumer to read the communication. Only the consumer may authorize the transfer and not, for example, a third-party merchant on behalf of the consumer.

6. *Requirements of an authorization.* An authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.

### 10(c) Consumer's Right to Stop Payment

1. *Stop-payment order.* The financial institution must honor an oral stop-payment order made at least three business days before a scheduled debit. If the debit item is resubmitted, the institution must continue to honor the stop-payment order (for example, by suspending all subsequent payments to the payee-originator until the consumer notifies the institution that payments should resume).

2. *Revocation of authorization.* Once a financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.

### 10(d) Notice of Transfers Varying in Amount

#### *Paragraph 10(d)(1)—Notice*

1. *Preexisting authorizations.* A financial institution holding the consumer's account does not violate the regulation if the designated payee fails to provide notice of varying amounts.

#### *Paragraph 10(d)(2)—Range*

1. *Range.* A financial institution or designated

payee that elects to offer the consumer a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide an acceptable range that could be anticipated by the consumer. For example, if the transfer is for payment of a gas bill, an appropriate range might be based on the highest bill in winter and the lowest bill in summer.

### 10(e) Compulsory Use

#### *Paragraph 10(e)(1)—Credit*

1. *Loan payments.* Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis. A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include—

- i. mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower;
- ii. mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

2. *Overdraft.* A financial institution may require the automatic repayment of an overdraft credit plan even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

#### *Paragraph 10(e)(2)—Employment or Government Benefit*

1. *Payroll.* A financial institution (as an employer) may not require its employees to receive their salary by direct deposit to that same institution or to any other particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice

of having their salary deposited at a particular institution, or receiving their salary by check or cash.

### SECTION 205.11—Procedures for Resolving Errors

#### 11(a) Definition of Error

1. *Terminal location.* With regard to deposits at an ATM, a consumer's request for the terminal location or other information triggers the error-resolution procedures, but the financial institution need only provide the ATM location if it has captured that information.

2. *Verifying account deposit.* If the consumer merely calls to ascertain whether a deposit made via ATM, preauthorized transfer, or any other type of EFT was credited to the account, without asserting an error, the error-resolution procedures do not apply.

3. *Loss or theft of access device.* A financial institution is required to comply with the error-resolution procedures when a consumer reports the loss or theft of an access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft.

4. *Error asserted after account closed.* The financial institution must comply with the error-resolution procedures when a consumer properly asserts an error, even if the account has been closed.

5. *Request for documentation or information.* A request for documentation or other information must be treated as an error unless it is clear that the consumer is requesting a duplicate copy for tax or other recordkeeping purposes.

#### 11(b) Notice of Error from Consumer

##### *Paragraph 11(b)(1)—Timing; Contents*

1. *Content of error notice.* The notice of error is effective even if it does not contain the consumer's account number, so long as the financial institution is able to identify the account in question. For example, the consumer



could provide a Social Security number or other unique means of identification.

2. *Investigation pending receipt of information.* While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement.

3. *Statement held for consumer.* When a consumer has arranged for periodic statements to be held until picked up, the statement for a particular cycle is deemed to have been transmitted on the date the financial institution first makes the statement available to the consumer.

4. *Failure to provide statement.* When a financial institution fails to provide the consumer with a periodic statement, a request for a copy is governed by this section if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.

5. *Discovery of error by institution.* The error-resolution procedures of this section apply when a notice of error is received from the consumer, and not when the financial institution itself discovers and corrects an error.

6. *Notice at particular phone number or address.* A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

*Paragraph 11(b)(2)—Written Confirmation*

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the financial institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days in getting to the right place because it was sent to the wrong address.

**11(c) Time Limits and Extent of Investigation**

1. *Notice to consumer.* Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.

2. *Written confirmation of oral notice.* A financial institution must begin its investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

3. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the financial institution may not impose a charge related to any aspect of the error-resolution process (including charges for documentation or investigation). Since the act grants the consumer error-resolution rights, the institution should avoid any chilling effect on the good-faith assertion of errors that might result if charges are assessed when no billing error has occurred.

4. *Correction without investigation.* A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of section 205.11.

5. *Correction notice.* A financial institution may include the notice of correction on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day time limits and that clearly identifies the correction to the consumer's account. The institution must determine whether such a mailing will be prompt enough to satisfy the requirements of this section, taking into account the specific facts involved.

6. *Correction of an error.* If the financial institution determines an error occurred, within either the 10-day or 45-day period, it must correct the error (subject to the liability provisions of sections 205.6(a) and (b)) including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution. In a combined credit/EFT transaction, for example, the institution must refund any finance charges incurred as a result of the

error. The institution need not refund fees that would have been imposed whether or not the error occurred.

**7. Extent of required investigation.** A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in section 205.11(a)(1)(vii) by transmitting the requested information, clarification, or documentation within the time limits set forth in section 205.11(c). If the institution has provisionally credited the consumer's account in accordance with section 205.11(c)(2), it may debit the amount upon transmitting the requested information, clarification, or documentation.

*Paragraph 11(c)(2)(i)*

**1. Compliance with all requirements.** Financial institutions exempted from provisionally crediting a consumer's account under section 205.11(c)(2)(i)(A) and (B) must still comply with all other requirements of section 205.11.

*Paragraph 11(c)(3)—Extension of Time Periods*

**1. POS debit card transactions.** The extended deadlines for investigating errors resulting from POS debit card transactions apply to all debit card transactions, including those for cash only, at merchants' POS terminals, and also including mail and telephone orders. The deadlines do not apply to transactions at an ATM, however, even though the ATM may be in a merchant location.

*Paragraph 11(c)(4)—Investigation*

**1. Third parties.** When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error-resolution requirement by so advising the consumer within the specified time period.

**2. Scope of investigation.** When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement

exists between the institution and the third party concerning the bill-payment service.

**3. POS transfers.** When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted when executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

**4. Agreement.** An agreement that a third party will honor an access device is an agreement for purposes of this paragraph. A financial institution does not have an agreement for purposes of section 205.11(c)(4)(ii) solely because it participates in transactions that occur under the federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement.

**11(d) Procedures If Financial Institution Determines No Error or Different Error Occurred**

**1. Error different from that alleged.** When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both section 205.11(c) and (d), as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

*Paragraph 11(d)(1)—Written Explanation*

**1. Request for documentation.** When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape it must convert the applicable data into readable form, for example, by printing it and explaining any codes.

*Paragraph 11(d)(2)—Debiting Provisional Credit*

**1. Alternative procedure for debiting of credited funds.** The financial institution may

comply with the requirements of this section by notifying the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

**2. Fees for overdrafts.** The financial institution may not impose fees for items it is required to honor under section 205.11 of this section. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days, the institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.

#### 11(e) Reassertion of Error

**1. Withdrawal of error; right to reassert.** The financial institution has no further error-resolution responsibilities if the consumer voluntarily withdraws the notice alleging an error. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error-resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

### SECTION 205.12—Relation to Other Laws

#### 12(a) Relation to Truth in Lending

**1. Determining applicable regulation.** For transactions involving access devices that also constitute credit cards, whether Regulation E or Regulation Z (12 CFR 226) applies, depends on the nature of the transaction. For example, if the transaction is purely an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error-resolution requirements of Regulation Z apply. If the transaction only debits a checking account (with no credit extended), the provisions of Regulation E apply. Finally, if the transaction debits a checking account but also draws on an overdraft line of credit, the Regulation E

provisions apply, as well as sections 226.13(d) and (g) of Regulation Z. In such a transaction, the consumer might be liable for up to \$50 under Regulation Z (12 CFR 226) and, in addition, for \$50, \$500, or an unlimited amount under Regulation E.

**2. Issuance rules.** For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance). Regulation Z (12 CFR 226) rules apply if there is another type of credit feature, for example, one permitting direct extensions of credit that do not involve the asset account.

#### 12(b) Preemption of Inconsistent State Laws

**1. Specific determinations.** The regulation prescribes standards for determining whether state laws that govern EFTs are preempted by the act and the regulation. A state law that is inconsistent may be preempted even if the Board has not issued a determination. However, nothing in section 205.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Board later determines that the state law is not preempted.

**2. Preemption determination.** The Board determined that certain provisions in the state law of Michigan are preempted by the federal law, effective March 30, 1981:

- i. Definition of unauthorized use. Section 5(4) is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.
- ii. Consumer liability for unauthorized use of an account. Section 14 is inconsistent with section 205.6 and is less protective of the consumer than the federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's

promptness in reporting the loss or theft of the access device.

- iii. **Error resolution.** Section 15 is preempted because it is inconsistent with section 205.11 and is less protective of the consumer than the federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the federal law generally requires errors to be resolved within 45 days.
- iv. **Receipts and periodic statements.** Sections 17 and 18 are preempted because they are inconsistent with section 205.9. The state provisions require a different disclosure of information than does the federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

#### SECTION 205.13—Administrative Enforcement; Record Retention

##### 13(b) Record Retention

1. **Requirements.** A financial institution need not retain records that it has given disclosures and documentation to each consumer; it need only retain evidence demonstrating that its procedures reasonably ensure the consumers' receipt of required disclosures and documentation.

#### SECTION 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

##### 14(a) Electronic Fund Transfer Service Providers Subject to Regulation

1. **Applicability.** This section applies only when a service provider issues an access device to a consumer for initiating transfers to or from the consumer's account at a financial institution and the two entities have no agreement regarding this EFT service. If the service provider does not issue an access device to the consumer for accessing an account held by

another institution, it does not qualify for the treatment accorded by section 205.14. For example, this section does not apply to an institution that initiates preauthorized payroll deposits to consumer accounts on behalf of an employer. By contrast, section 205.14 can apply to an institution that issues a code for initiating telephone transfers to be carried out through the ACH from a consumer's account at another institution. This is the case even if the consumer has accounts at both institutions.

2. **ACH agreements.** The ACH rules generally do not constitute an agreement for purposes of this section. However, an ACH agreement under which members specifically agree to honor each other's debit cards is an "agreement," and thus this section does not apply.

##### 14(b) Compliance by Electronic Fund Transfer Service Provider

1. **Liability.** The service provider is liable for unauthorized EFTs that exceed limits on the consumer's liability under section 205.6.

##### *Paragraph 14(b)(1)—Disclosures and Documentation*

1. **Periodic statements from electronic fund transfer service provider.** A service provider that meets the conditions set forth in this paragraph does not have to issue periodic statements. A service provider that does not meet the conditions need only include on periodic statements information about transfers initiated with the access device it has issued.

##### *Paragraph 14(b)(2)—Error Resolution*

1. **Error resolution.** When a consumer notifies the service provider of an error, the EFT service provider must investigate and resolve the error in compliance with section 205.11 as modified by section 205.14(b)(2). If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

### 14(c) Compliance by Account-Holding Institution

#### *Paragraph 14(c)(1)*

1. *Periodic statements from account-holding institution.* The periodic statement provided by the account-holding institution need only contain the information required by section 205.9(b)(1).

### APPENDIX A—Model Disclosure Clauses and Forms

1. *Review of forms.* The Board will not review or approve disclosure forms or statements for financial institutions. However, the Board has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. *Use of the forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance

with the disclosure requirements of sections 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii) and 205.15(d)(7) and (d)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution's EFT services.

3. *Altering the clauses.* Financial institutions may use clauses of their own design in conjunction with the Board's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.