

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

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AUTHORITY: 15 U.S.C. 78c, 78g, 78q, and 78w.

SOURCE: Regulation T, §§220.1 through 220.18 appear at 48 FR 23165, May 24, 1983, unless otherwise noted.

EDITORIAL NOTE: A copy of each form referred to in this part is filed as a part of the original document. Copies are available upon request to the Board of Governors of the Federal Reserve System or any Federal Reserve Bank.

§ 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 U.S.C.78a *et seq.*). Its principal purpose is to regulate extensions of credit by 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 certain securities transactions.

(b) *Scope.* (1) This part provides a margin account and four special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special purpose 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:

(i) Financial relations between a customer and a creditor to the extent that they comply with a portfolio margining system under rules approved or amended by the SEC;

(ii) Credit extended by a creditor based on a good faith determination that the borrower is an exempted borrower;

(iii) Financial relations between a customer and a broker or dealer registered only under section 15C of the Act; and

(iv) Financial relations between a foreign branch of a creditor and a foreign person involving foreign securities.

[Reg. T, 63 FR 2820, Jan. 16, 1998]

§ 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 as follows:

Affiliated corporation means a corporation of which all the common stock 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.

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

Covered option transaction means any 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:

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

(2) 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.

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 controlling or under common control with the creditor.

Current market value of:

(1) A security means:

(i) Throughout the day of the purchase or sale of a security, the security’s total cost of purchase or the net proceeds of its sale including any commissions charged; or

(ii) At any other time, 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 sale 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.

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

Customer excludes an exempted borrower and 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 C.O.D. 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 borrower means a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, and includes a borrower who:

(1) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, and persons associated with a broker or dealer;

(2) Earns at least \$10 million in gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer; or

(3) Earns at least 10 percent of its gross revenues on an annual basis from transactions with persons other than brokers, dealers, and persons associated with a broker or dealer.

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

Foreign margin stock means a foreign security that is an equity security that:

(1) Appears on the Board's periodically published List of Foreign Margin Stocks; or

(2) Is deemed to have a "ready market" under SEC Rule 15c3-1 (17 CFR 240.15c3-1) or a "no-action" position issued thereunder.

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 with respect to:

(1) Margin means the amount of margin which a creditor would require in exercising sound credit judgment;

(2) Making a determination or accepting a statement concerning a borrower means that the creditor is alert to the circumstances surrounding the credit, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

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 equity security means a margin security that is an equity security (as defined in section 3(a)(11) of the Act).

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 § 220.12 (the Supplement).

Margin security means:

(1) Any security registered or having unlisted trading privileges on a national securities exchange;

(2) After January 1, 1999, any security listed on the Nasdaq Stock Market;

(3) Any non-equity security;

(4) 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 U.S.C. 80a-8);

(5) Any foreign margin stock;

(6) Any debt security convertible into a margin security;

(7) Until January 1, 1999, any OTC margin stock; or

(8) Until January 1, 1999, 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).

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

Non-equity security means a security that is not an equity security (as defined in section 3(a)(11) of the Act).

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

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.

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.

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.

Short call or short put means a call option or a put option that is issued, en-

dorsed, 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.

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.

[Reg. T, 63 FR 2821, Jan. 16, 1998]

§ 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*—(1) *In general*. The requirements of one account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under this part, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(2) *Exceptions*. Notwithstanding paragraph (b)(1) of this section:

(i) For purposes of calculating the required margin for a security in a margin account, assets held in the good faith account pursuant to § 220.6(e)(1)(i) or (ii) may serve in lieu of margin;

(ii) Transfers may be effected between the margin account and the special memorandum account pursuant to §§ 220.4 and 220.5.

(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 the 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) *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 221 or 224 of this chapter.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating 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.* (1) Freely convertible foreign currency may be treated at its U.S. dollar equivalent, provided the currency is marked-to-market daily.

(2) A creditor may extend credit denominated in any freely convertible foreign currency.

(j) *Exempted borrowers.* (1) A member of a national securities exchange or a registered broker or dealer that has been in existence for less than one year may meet the definition of exempted borrower based on a six-month period.

(2) Once a member of a national securities exchange or registered broker or dealer ceases to qualify as an exempted borrower, it shall notify its lender of this fact before obtaining additional credit. Any new extensions of credit to such a borrower, including rollovers, renewals, and additional draws on existing lines of credit, are subject to the provisions of this part.

[Reg. T, 63 FR 2822, Jan. 16, 1998]

§ 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 §220.12 (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) *Sound credit judgment*. In exercising sound credit judgment to determine the margin required in good faith pursuant to §220.12 (the Supplement), the creditor shall make its determination for a specified security position without regard to the customer’s other assets or securities positions held in connection with unrelated transactions.

(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 securities, 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 \$1000 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 account on the day it is payable and withdrawal would not be permitted under this paragraph (e), 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.

[Reg. T, 63 FR 2823, Jan. 16, 1998]

§ 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 § 220.4(e); and

(4) Margin excess transferred from the margin account under § 220.4(e)(2).

[Reg. T, 63 FR 2824, Jan. 16, 1998]

§ 220.6 Good faith account.

In a good faith account, a creditor may effect or finance customer transactions in accordance with the following provisions:

(a) *Securities entitled to good faith margin—(1) Permissible transactions.* A creditor may effect and finance transactions involving the buying, carrying, or trading of any security entitled to “good faith” margin as set forth in § 220.12 (the Supplement).

(2) *Required margin.* The required margin is set forth in § 220.12 (the Supplement).

(3) *Satisfaction of margin.* Required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, securities entitled to “good faith” margin as set forth in § 220.12 (the Supplement), any other asset that is not a security, or any combination thereof. An asset that is not a security shall have a margin value determined by the creditor in good faith.

(b) *Arbitrage.* 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:

(1) 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

(2) 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.

(c) *“Prime broker” transactions.* A creditor may effect transactions for a customer as part of a “prime broker” arrangement in conformity with SEC guidelines.

(d) *Credit to ESOPs.* A creditor may extend and maintain credit to em-

ployee stock ownership plans without regard to the other provisions of this part.

(e) *Nonpurpose credit.* (1) A creditor may:

(i) Effect and carry transactions in commodities;

(ii) Effect and carry transactions in foreign exchange;

(iii) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (e)(2) of this section.

(2) Every extension of credit, except as provided in paragraphs (e)(1)(i) and (e)(1)(ii) 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.

[Reg. T, 63 FR 2824, Jan. 16, 1998]

§ 220.7 Broker-dealer credit account.

(a) *Requirements.* In a broker-dealer credit account, a creditor may effect or finance transactions in accordance with the following provisions.

(b) *Purchase or sale of security against full payment.* A creditor may 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.

(c) *Joint back office.* A creditor may 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.

(d) *Capital contribution.* A creditor may 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.

(e) *Emergency and subordinated credit.* A creditor may extend and maintain, with the approval of the appropriate examining authority:

(1) Credit to meet the emergency needs of any creditor; or

(2) Subordinated credit to another creditor for capital purposes, if the other creditor:

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

(ii) 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.

(f) *Omnibus credit* (1) 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:

(i) All securities will be for the account of customers of the broker or dealer; and

(ii) Any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(2) The written notice required by paragraph (f)(1) of this section shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

(g) *Special purpose credit*. A creditor may extend the following types of credit with good faith margin:

(1) Credit to finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid upon completion of the transaction.

(2) Credit to finance securities in transit or surrendered for transfer, if the credit is to be repaid upon completion of the transaction.

(3) 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.

(4) Credit to an exempted borrower.

(5) Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as a market maker or specialist.

(6) Credit to a member of a national securities exchange or registered broker or dealer to finance its activities as an underwriter.

[Reg. T, 63 FR 2824, Jan. 16, 1998]

§ 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 \$1000.

(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 trans-

action 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.

[Reg. T, 63 FR 2825, Jan. 16, 1998]

§ 220.9 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 directly 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 option 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.

[Reg. T, 63 FR 2826, Jan. 16, 1998]

§ 220.10 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. If a creditor reasonably anticipates a short sale or fail transaction, such borrowing may be made up to one standard settlement cycle in advance of trade date.

(b) A creditor may lend foreign securities to a foreign person (or borrow such securities for the purpose of re-lending them to a foreign person) for any purpose lawful in the country in which they are to be used.

(c) A creditor that is an exempted borrower may lend securities without regard to the other provisions of this part and a creditor may borrow securities from an exempted borrower without regard to the other provisions of this part.

[Reg. T, 63 FR 2826, Jan. 16, 1998]

§ 220.11 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 U.S.C. 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 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 security shall meet the following requirements before being placed on the *List of Foreign Margin Stocks*:

(1) The security is an equity security that 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 security shall meet the following requirements to remain on the *List of Foreign Margin Stocks*:

(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 list.* 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 an 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.

[Reg. T, 63 FR 2826, Jan. 16, 1998]

§ 220.12 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, non-equity security, 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 non-equity security:

(1) 150 percent of the current market value of the security; or

(2) 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, provided that any long call to be used as margin in connection with a short sale of the underlying security is an American-style option issued by a registered clearing corporation and listed or traded on a registered national securities exchange with an exercise price that does not exceed the price at which the underlying security was sold short.

(d) Short sale of an exempted security or non-equity security: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted equity 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 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.

[Reg. T, 63 FR 2827, Jan. 16, 1998]

INTERPRETATIONS

§ 220.101 Transactions of customers who are brokers or dealers.

The Board has recently considered certain questions regarding transactions of customers who are brokers or dealers.

(a) The first question was whether delivery and payment under § 220.4(f)(3) must be exactly simultaneous (such as in sight draft shipments), or whether it is sufficient if the broker-dealer customer, "as promptly as practicable in accordance with the ordinary usage of the trade," mails or otherwise delivers to the creditor a check in settlement of the transaction, the check being accompanied by instructions for transfer or delivery of the security. The Board ruled that the latter method of setting the transaction is permissible.

(b) The second question was, in effect, whether the limitations of § 220.4(c)(8) apply to the account of a customer who is himself a broker or dealer. The answer is that the provision applies to any "special cash account," regardless of the type of customer.

(c) The third question was, in effect, whether a purchase and a sale of an unissued security under § 220.4(f)(3) may be offset against each other, or whether each must be settled separately by what would amount to delivery of the security to settle one transaction and its redelivery to settle the other. The answer is that it is permissible to offset the transactions against each other

without physical delivery and redelivery of the security.

[11 FR 14155, Dec. 7, 1946]

§ 220.102 [Reserved]

§ 220.103 Borrowing of securities.

(a) The Board of Governors has been asked for a ruling as to whether § 220.6(h), which deals with borrowing and lending of securities, applies to a borrower of securities if the lender is a private individual, as contrasted with a member of a national securities exchange or a broker or dealer.

(b) Section 220.6(h) does not require that the lender of the securities in such a case be a member of a national securities exchange or a broker or dealer. Therefore, a borrowing of securities may be able to qualify under the provision even though the lender is a private individual, and this is true whether the security is registered on a national securities exchange or is unregistered. In borrowing securities from a private individual under § 220.6(h), however, it becomes especially important to bear in mind two limitations that are contained in the section.

(c) The first limitation is that the section applies only if the broker borrows the securities for the purpose specified in the provision, that is, “for the purpose of making delivery of such securities in the case of short sales, failure to receive securities he is required to deliver, or other similar cases”. The present language of the provision does not require that the delivery for which the securities are borrowed must be on a transaction which the borrower has himself made, either as agent or as principal; he may borrow under the provision in order to relend to someone else for the latter person to make such a delivery. However, the borrowing must be related to an actual delivery of the type specified—a delivery in connection with a specific transaction that has already occurred or is in immediate prospect. The provision does not authorize a broker to borrow securities (or make the related deposit) merely in order that he or some other broker may have the securities “on hand” or may anticipate some need that may or may not arise in the future.

(d) The ruling in the 1940 Federal Reserve Bulletin, at page 647, is an example of a borrowing which, on the facts as given, did not meet the requirement. There, the broker wished to borrow stocks with the understanding that he “would offer to lend this stock in the ‘loan crowd’ on a national securities exchange.” There was no assurance that the stocks would be used for the purpose specified in § 220.6(h); they might be, or they might merely be held idle while the person lending the stocks had the use of the funds deposited against them. The ruling held in effect that since the borrowing could not qualify under § 220.6(h) it must comply with other applicable provisions of the regulation.

(e) The second requirement is that the deposit of cash against the borrowed securities must be “bona fide.” This requirement naturally cannot be spelled out in detail, but it requires at least that the purpose of the broker in making the deposit should be to obtain the securities for the specified purpose, and that he should not use the arrangement as a means of accommodating a customer who is seeking to obtain more funds than he could get in a general account.

(f) The Board recognizes that even with these requirements there is still some possibility that the provision may be misapplied. The Board is reluctant to impose additional burdens on legitimate transactions by tightening the provision. If there should be evidence of abuses developing under the provision, however, it would become necessary to consider making it more restricted.

[12 FR 5278, Aug. 2, 1947]

§ 220.104 [Reserved]

§ 220.105 Ninety-day rule in special cash account.

(a) Section 220.4(c)(8) places a limitation on a special cash account if a security other than an exempted security has been purchased in the account and “without having been previously paid for in full by the customer * * * has been * * * delivered out to any broker or dealer.” The limitation is that during the succeeding 90 days the customer may not purchase a security in

the account other than an exempted security unless funds sufficient for the purpose are held in the account. In other words, the privilege of delayed payment in such an account is withdrawn during the 90-day period.

(b) The Board recently considered a question as to whether the following situation makes an account subject to the 90-day disqualification: A customer purchases registered security ABC in a special cash account. The broker executes the order in good faith as a bona fide cash transaction, expecting to obtain full cash payment promptly. The next day, the customer sells registered security XYZ in the account, promising to deposit it promptly in the account. The proceeds of the sale are equal to or greater than the cost of security ABC. After both sale and purchase have been made, the customer requests the broker to deliver security ABC to a different broker, to receive security XYZ from that broker at about the same time, and to settle with the other broker—such settlement to be made either by paying the cost of security XYZ to the other broker and receiving from him the cost of security ABC, or by merely settling any difference between these amounts.

(c) The Board expressed the view that the account becomes subject to the 90-day disqualification in § 220.4(c)(8). In the instant case, unlike that described at 1940 Federal Reserve Bulletin 772, the security sold is not held in the account and is not to be deposited in it unconditionally. It is to be obtained only against the delivery to the other broker of the security which had been purchased. Hence payment can not be said to have been made prior to such delivery; the purchased security has been delivered out to a broker without previously having been paid for in full, and the account becomes subject to the 90-day disqualification.

[13 FR 2368, May 1, 1948]

§§ 220.106–220.107 [Reserved]

§ 220.108 International Bank Securities.

(a) Section 2 of the Act of June 29, 1949 (Pub. L. 142—81st Congress), amended the Bretton Woods Agree-

ments Act by adding a new section numbered 15 providing, in part, that—

Any securities issued by International Bank for Reconstruction and Development (including any guaranty by the bank, whether or not limited in scope), and any securities guaranteed by the bank as to both principal and interest, shall be deemed to be exempted securities within the meaning of * * * paragraph (a)(12) of section 3 of the [Securities Exchange] Act of June 6, 1934, as amended (15 U.S.C. 78c). * * *

(b) In response to inquiries with respect to the applicability of the margin requirements of this part to securities issued or guaranteed by the International Bank for Reconstruction and Development, the Board has replied that, as a result of this enactment, securities issued by the Bank are now classified as exempted securities under § 220.2(e). Such securities are now in the same category under this part as are United States Government, State and municipal bonds. Accordingly, the specific percentage limitations prescribed by this part with respect to maximum loan value and margin requirements are no longer applicable thereto.

[14 FR 5505, Sept. 7, 1949]

§ 220.109 [Reserved]

§ 220.110 Assistance by Federal credit union to its members.

(a) An inquiry was presented recently concerning the application of this part or part 221 of this subchapter, to a plan proposed by a Federal credit union to aid its members in purchasing stock of a corporation whose subsidiary apparently was the employer of all the credit union's members.

(b) From the information submitted, the plan appeared to contemplate that the Federal credit union would accept orders from its members for registered common stock of the parent corporation in multiples of 5 shares; that whenever orders had been so received for a total of 100 shares, the credit union, as agent for such members, would execute the orders through a brokerage firm with membership on a national securities exchange; that the brokerage firm would deliver certificates for the stock, registered in the names of the individual purchasers, to the credit union against payment by

the credit union; that the credit union would prorate the total amount so paid, including the brokerage fee, among the individual purchasers according to the number of shares purchased by them; and that a savings in brokerage fee resulting from the 100-lot purchases would be passed on by the credit union to the individual purchasers of the stock. However, amounts of the stock less than 100 shares would be purchased by the credit union through the brokerage firm for any members willing to forego such savings.

(c) It appeared further that the Federal credit union members for whom stock was so purchased would reimburse the credit union (1) by cash payment, (2) by the proceeds of withdrawn shares of the credit union, (3) by the proceeds of an installment loan from the credit union collateralized by the stock purchased, or by (4) by a combination of two or more of the above methods. To assist the collection of any such loan, the employer of the credit union members would provide payroll deductions. Apparently, sales by the credit union of any of the stock purchased by one of its members would occur only in satisfaction of a delinquent loan balance. In no case did it appear that the credit union would make a charge for arranging the execution of transactions in the stock for its members.

(d) The Board was of the view that, from the facts as presented, it did not appear that the Federal credit union should be regarded as the type of institution to which part 221 of this subchapter, in its present form, applied.

(e) With respect to this part, the question was whether the activities of the Federal credit union under the proposal, or otherwise, might be such as to bring it within the meaning of the terms "broker" or "dealer" as used in the part and the Securities Exchange Act of 1934. The Board observed that this, of course, was a question of fact that necessarily depended upon the circumstances of the particular case, including the manner in which the arrangement in question might be carried out in practice.

(f) On the basis of the information submitted, however, it did not appear

to the Board that the Federal credit union should be regarded as being subject to this part as a "broker or dealer who transacts a business in securities through the medium of" a member firm solely because of its activities as contemplated by the proposal in question. The Board stated that the part rather clearly would not apply if there appeared to be nothing other than loans by the credit union to its members to finance purchases made directly by them of stock of the parent corporation of the employer of the member-borrowers. The additional fact that the credit union, as agent, would purchase such stock for its members (even though all such purchases might not be financed by credit union loans) was not viewed by the Board as sufficient to make the regulation applicable where, as from the facts presented, it did not appear that the credit union in any case was to make any charge or receive any compensation for assisting in such purchases or that the credit union otherwise was engaged in securities activities. However, the Board stated that matters of this kind must be examined closely for any variations that might suggest the inapplicability of the foregoing.

[18 FR 4592, Aug. 5, 1953]

§ 220.111 Arranging for extensions of credit to be made by a bank.

(a) The Board has recently had occasion to express opinions regarding the requirements which apply when a person subject to this part (for convenience, called here simply a broker) arranges for a bank to extend credit.

(b) The matter is treated generally in § 220.7(a) and is also subject to the general rule of law that any person who aids or abets a violation of law by another is himself guilty of a violation. It may be stated as a general principle that any person who arranges for credit to be extended by someone else has a responsibility so to conduct his activities as not to be a participant in a violation of this part, which applies to brokers, or part 221 of this subchapter, which applies to banks.

(c) More specifically, in arranging an extension of credit that may be subject to part 221 of this subchapter, a broker must act in good faith and, therefore,

must question the accuracy of any non-purpose statement (i.e., a statement that the loan is not for the purpose of purchasing or carrying registered stocks) given in connection with the loan where the circumstances are such that the broker from any source knows or has reason to know that the statement is incomplete or otherwise inaccurate as to the true purpose of the credit. The requirement of "good faith" is of vital importance. While the application of the requirement will necessarily vary with the facts of the particular case, the broker, like the bank for whom the loan is arranged to be made, must be alert to the circumstances surrounding the loan. Thus, for example, if a broker or dealer is to deliver registered stocks to secure the loan or is to receive the proceeds of the loan, the broker arranging the loan and the bank making it would be put on notice that the loan would probably be subject to part 221 of this subchapter. In any such circumstances they could not in good faith accept or rely upon a statement to the contrary without obtaining a reliable and satisfactory explanation of the situation. The foregoing, of course, applies the principles contained in § 221.101 of this subchapter.

(d) In addition, when a broker is approached by another broker to arrange extensions of credit for customers of the approaching broker, the broker approached has a responsibility not to arrange any extension of credit which the approaching broker could not himself arrange. Accordingly, in such cases the statutes and regulations forbid the approached broker to arrange extensions of credit on unregistered securities for the purpose of purchasing or carrying either registered or unregistered securities. The approaching broker would also be violating the applicable requirements if he initiated or otherwise participated in any such forbidden transactions.

(e) The expression of views, set forth in this section, to the effect that certain specific transactions are forbidden, of course, should not in any way be understood to indicate approval of any other transactions which are not mentioned.

[18 FR 5505, Sept. 15, 1953]

§ 220.112 [Reserved]

§ 220.113 Necessity for prompt payment and delivery in special cash accounts.

(a) The Board of Governors recently received an inquiry concerning whether purchases of securities by certain municipal employees' retirement or pension systems on the basis of arrangements for delayed delivery and payment, might properly be effected by a creditor subject to this part in a special cash account under § 220.4(c).

(b) It appears that in a typical case the supervisors of the retirement system meet only once or twice each month, at which times decisions are made to purchase any securities wished to be acquired for the system. Although the securities are available for prompt delivery by the broker-dealer firm selected to effect the system's purchase, it is arranged in advance with the firm that the system will not accept delivery and pay for the securities before some date more than seven business days after the date on which the securities are purchased. Apparently, such an arrangement is occasioned by the monthly or semimonthly meetings of the system's supervisors. It was indicated that a retirement system of this kind may be supervised by officials who administer it as an incidental part of their regular duties, and that meetings requiring joint action by two or more supervisors may be necessary under the system's rules and procedures to authorize issuance of checks in payment for the securities purchased. It was indicated also that the purchases do not involve exempted securities, securities of the kind covered by § 220.4(c)(3), or any shipment of securities as described in § 220.4(c).

(c) This part provides that a creditor subject thereto may not effect for a customer a purchase in a special cash account under § 220.4(c) unless the use of the account meets the limitations of § 220.4(a) and the purchase constitutes a "bona fide cash transaction" which complies with the eligibility requirements of § 220.4(c)(1)(i). One such requirement is that the purchase be made "in reliance upon an agreement accepted by the creditor (broker-dealer) in good faith" that the customer

will “promptly make full cash payment for the security, if funds sufficient for the purpose are not already in the account; and, subject to certain exceptions, §220.4(c)(2) provides that the creditor shall promptly cancel or liquidate the transaction if payment is not made by the customer within seven business days after the date of purchase. As indicated in the Board’s interpretation at 1940 Federal Reserve Bulletin 1172, a necessary part of the customer’s undertaking pursuant to §220.4(c)(1)(i) is that he “should have the necessary means of payment readily available when he purchases a security in the special cash account. He should expect to pay for it immediately or in any event within the period (of not more than a very few days) that is as long as is usually required to carry through the ordinary securities transaction.”

(d) The arrangements for delayed delivery and payment in the case presented to the Board and outlined above clearly would be inconsistent with the requirement of §220.4(c)(1)(i) that the purchase be made in reliance upon an agreement accepted by the creditor in good faith that the customer will “promptly” make full cash payment for the security. Accordingly, the Board said that transactions of the kind in question would not qualify as a “bona fide cash transaction” and, therefore, could not properly be effected in a special cash account, unless a contrary conclusion would be justified by the exception in §220.4(c)(5).

(e) Section 220.4(c)(5) provides that if the creditor, “acting in good faith in accordance with” §220.4(c)(1), purchases a security for a customer “with the understanding that he is to deliver the security promptly to the customer, and the full cash payment is to be made promptly by the customer is to be made against such delivery”, the creditor may at his option treat the transaction as one to which the period applicable under §220.4(c)(2) is not the seven days therein specified but 35 days after the date of such purchase. It will be observed that the application of §220.4(c)(5) is specifically conditioned on the creditor acting in good faith in accordance with §220.4(c)(1). As noted above, the existence of the arrange-

ments for delayed delivery and payment in the case presented would prevent this condition from being met, since the customer could not be regarded as having agreed to make full cash payment “promptly”. Furthermore, such arrangements clearly would be inconsistent with the requirement of §220.4(c)(5) that the creditor “deliver the security promptly to the customer”.

(f) Section 220.4(c)(5) was discussed in the Board’s published interpretation, referred to above, which states that “it is not the purpose of (§220.4(c)(5)) to allow additional time to customers for making payment. The ‘prompt delivery’ described in (§220.4(c)(5)) is delivery which is to be made as soon as the broker or dealer can reasonably make it in view of the mechanics of the securities business and the bona fide usages of the trade. The provision merely recognizes the fact that in certain circumstances it is an established bona fide practice in the trade to obtain payment against delivery of the security to the customer, and the further fact that the mechanics of the trade, unrelated to the customer’s readiness to pay, may sometimes delay such delivery to the customer”.

(g) In the case presented, it appears that the only reason for the delay is related solely to the customer’s readiness to pay and is in no way attributable to the mechanics of the securities business. Accordingly, it is the Board’s view that the exception in §220.4(c)(5) should not be regarded as permitting the transactions in question to be effected in a special cash account.

[22 FR 5954, July 27, 1957]

§§ 220.114-220.116 [Reserved]

§ 220.117 Exception to 90-day rule in special cash account.

(a) The Board of Governors has recently interpreted certain of the provisions of §220.4(c)(8), with respect to the withdrawal of proceeds of a sale of stock in a “special cash account” when the stock has been sold out of the account prior to payment for its purchase.

(b) The specific factual situation presented may be summarized as follows:

Customer purchased stock in a special cash account with a member firm on Day 1. On Day 3 customer sold the same stock at a profit. On Day 8 customer delivered his check for the cost of the purchase to the creditor (member firm). On Day 9 the creditor mailed to the customer a check for the proceeds of the sale.

(c) Section 220.4(c)(8) prohibits a creditor, as a general rule, from effecting a purchase of a security in a customer's special cash account if any security has been purchased in that account during the preceding 90 days and has then been sold in the account or delivered out to any broker or dealer without having been previously paid for in full by the customer. One exception to this general rule reads as follows:

*** The creditor may disregard for the purposes of this subparagraph (§220.4(c)(8)) a sale without prior payment provided full cash payment is received within the period described by subparagraph (2) of this paragraph (seven days after the date of purchase) and the customer has not withdrawn the proceeds of sale on or before the day on which such payment (and also final payment of any check received in that connection) is received.***

(d) Final payment of customer's check: (1) The first question is: When is the creditor to be regarded as having received "final payment of any check received" in connection with the purchase?

(2) The clear purpose of §220.4(c)(8) is to prevent the use of the proceeds of sale of a stock by a customer to pay for its purchase—i.e., to prevent him from trading on the creditor's funds by being able to deposit the sale proceeds prior to presentation of his own check to the drawee bank. Thus, when a customer undertakes to pay for a purchase by check, that check does not constitute payment for the purchase, within the language and intent of the above-quoted exception in §220.4(c)(8), until it has been honored by the drawee bank, indicating the sufficiency of his account to pay the check.

(3) The phrase "final payment of any check" is interpreted as above notwithstanding §220.6(f), which provides that:

For the purposes of this part (Regulation T), a creditor may, at his option (1) treat the receipt in good faith of any check or draft drawn on a bank which in the ordinary

course of business is payable on presentation, *** as receipt of payment of the amount of such check, draft or order;***

This is a general provision substantially the same as language found in section 4(f) of Regulation T as originally promulgated in 1934. The language of the subject exception to the 90-day rule of §220.4(c)(8), i.e., the exception based expressly on final "payment of any check," was added to the regulation in 1949 by an amendment directed at a specific type of situation. Because the exception is a special, more recent provision, and because §220.6(f), if controlling, would permit the exception to undermine, to some extent, the effectiveness of the 90-day rule, sound principles of construction require that the phrase "final payment of any check" be given its literal and intended effect.

(4) There is no fixed period of time from the moment of receipt by the payee, or of deposit, within which it is certain that any check will be paid by the drawee bank. Therefore, in the rare case where the operation of the subject exception to §220.4(c)(8) is necessary to avoid application of the 90-day rule, a creditor should ascertain (from his bank of deposit or otherwise) the fact of payment of a customer's check given for the purchase. Having so determined the day of final payment, the creditor can permit withdrawal on any subsequent day.

(e) Mailing as "withdrawal": (1) Also presented is the question whether the mailing to the customer of the creditor's check for the sale proceeds constitutes a withdrawal of such proceeds by the customer at the time of mailing so that, if the check for the sale proceeds is mailed on or before the day on which the customer's check for the purchase is finally paid, the 90-day rule applies. It may be that a check mailed one day will not ordinarily be received by the customer until the next. The Board is of the view, however, that when the check for sale proceeds is issued and released into the mails, the proceeds are to be regarded as withdrawn by the customer; a more liberal interpretation would open a way for circumvention. Accordingly, the creditor's check should not be mailed nor the sale proceeds otherwise released to

the customer “on or before the day” on which payment for the purchase, including final payment of any check given for such payment, is received by the creditor, as determined in accordance with the principles stated herein.

(2) Applying the above principles to the schedule of transactions described in the second paragraph of this interpretation, the mailing of the creditor’s check on “Day 9” would be consistent with the subject exception to § 220.4(c)(8), as interpreted herein, only if the customer’s check was paid by the drawee bank on “Day 8”.

[27 FR 3511, Apr. 12, 1962]

§ 220.118 Time of payment for mutual fund shares purchased in a special cash account.

(a) The Board has recently considered the question whether, in connection with the purchase of mutual fund shares in a “special cash account” under the provisions of this part 220, the 7-day period with respect to liquidation for nonpayment is that described in § 220.4(c)(2) or that described in § 220.4(c)(3).

(b) Section 220.4(c)(2) provides as follows:

In case a customer purchases a security (other than an exempted security) in the special cash account and does not make full cash payment for the security within 7 days after the date on which the security is so purchased, the creditor shall, except as provided in subparagraphs (3)-(7) of this paragraph, promptly cancel or otherwise liquidate the transaction or the unsettled portion thereof.

Section 220.4(c)(3), one of the exceptions referred to, provides in relevant part as follows:

If the security when so purchased is an unissued security, the period applicable to the transaction under subparagraph (2) of this paragraph shall be 7 days after the date on which the security is made available by the issuer for delivery to purchasers.

(c) In the case presented, the shares of the mutual fund (open-end investment company) are technically not issued at the time they are sold by the underwriter and distributor. Several days may elapse from the date of sale before a certificate can be delivered by the transfer agent. The specific inquiry

to the Board was, in effect, whether the 7-day period after which a purchase transaction must be liquidated or cancelled for nonpayment should run, in the case of mutual fund shares, from the time when a certificate for the purchased shares is available for delivery to the purchaser, instead of from the date of the purchase.

(d) Under the general rule of § 220.4(c)(2) that is applicable to purchases of outstanding securities, the 7-day period runs from the date of purchase without regard to the time required for the mechanical acts of transfer of ownership and delivery of a certificate. This rule is based on the principles governing the use of special cash accounts in accordance with which, in the absence of special circumstances, payment is to be made promptly upon the purchase of securities.

(e) The purpose of § 220.4(c)(3) is to recognize the fact that, when an issue of securities is to be issued at some fixed future date, a security that is a part of such issue can be purchased on a “when-issued” basis and that payment may reasonably be delayed until after such date of issue, subject to other basic conditions for transactions in a special cash account. Thus, unissued securities should be regarded as “made available for delivery to purchasers” on the date when they are substantially as available as outstanding securities are available upon purchase, and this would ordinarily be the designated date of issuance or, in the case of a stock dividend, the “payment date”. In any case, the time required for the mechanics of transfer and delivery of a certificate is not material under § 220.4(c)(3) any more than it is under § 220.4(c)(2).

(f) Mutual fund shares are essentially available upon purchase to the same extent as outstanding securities. The mechanics of their issuance and of the delivery of certificates are not significantly different from the mechanics of transfer and delivery of certificates for shares of outstanding securities, and the issuance of mutual fund shares is not a future event in a sense that would warrant the extension of the time for payment beyond that afforded in the case of outstanding securities. Consequently, the Board has concluded

that a purchase of mutual fund shares is not a purchase of an "unissued security" to which § 220.4(c)(3) applies, but is a transaction to which § 220.4(c)(2) applies.

[27 FR 10885, Nov. 8, 1962]

§ 220.119 Applicability of margin requirements to credit extended to corporation in connection with retirement of stock.

(a) The Board of Governors has been asked whether part 220 was violated when a dealer in securities transferred to a corporation 4,161 shares of the stock of such corporation for a consideration of \$33,288, of which only 10 percent was paid in cash.

(b) If the transaction was of a kind that must be included in the corporation's "general account" with the dealer (§ 220.3), it would involve an excessive extension of credit in violation of § 220.3 (b)(1). However, the transaction would be permissible if the transaction came within the scope of § 220.4(f)(8), which permits a "creditor" (such as the dealer) to "Extend and maintain credit to or for any customer without collateral or on any collateral whatever for any purpose other than purchasing or carrying or trading in securities." Accordingly, the crucial question is whether the corporation, in this transaction, was "purchasing" the 4,161 shares of its stock, within the meaning of that term as used in this part.

(c) Upon first examination, it might seem apparent that the transaction was a purchase by the corporation. From the viewpoint of the dealer the transaction was a sale, and ordinarily, at least a sale by one party connotes a purchase by the other. Furthermore, other indicia of a sale/purchase transaction were present, such as a transfer of property for a pecuniary consideration. However, when the underlying objectives of the margin regulations are considered, it appears that they do not encompass a transaction of this nature, where securities are transferred on credit to the issuer thereof for the purpose of retirement.

(d) Section 7(a) of the Securities Exchange Act of 1934 requires the Board of Governors to prescribe margin regulations "For the purpose of preventing the excessive use of credit for the pur-

chase or carrying of securities." Accordingly, the provisions of this part are not intended to prevent the use of credit where the transaction will not have the effect of increasing the volume of credit in the securities markets.

(e) It appears that the instant transaction would have no such effect. When the transaction was completed, the equity interest of the dealer was transmuted into a dollar-obligation interest; in lieu of its status as a stockholder of the corporation, the dealer became a creditor of that corporation. The corporation did not become the owner of any securities acquired through the use of credit; its outstanding stock was simply reduced by 4,161 shares.

(f) The meaning of "sale" and "purchase" in the Securities Exchange Act has been considered by the Federal courts in a series of decisions dealing with corporate "insiders" profits under section 16(b) of that Act. Although the statutory purpose sought to be effectuated in those cases is quite different from the purpose of the margin regulations, the decisions in question support the propriety of not regarding a transaction as a "purchase" where this accords with the probable legislative intent, even though, literally, the statutory definition seems to include the particular transaction. See *Roberts v. Eaton* (CA 2 1954) 212 F. 2d 82, and cases and other authorities there cited. The governing principle, of course, is to effectuate the purpose embodied in the statutory or regulatory provision being interpreted, even where that purpose may conflict with the literal words. *U.S. v. Amer. Trucking Ass'ns*, 310 U.S. 534, 543 (1940); 2 *Sutherland, Statutory Construction* (3d ed. 1943) ch. 45.

(g) There can be little doubt that an extension of credit to a corporation to enable it to retire debt securities would not be for the purpose of "purchasing * * * securities" and therefore would come within § 220.4(f)(8), regardless of whether the retirement was obligatory (e.g., at maturity) or was a voluntary "call" by the issuer. This is true, it is difficult to see any valid distinction, for this purpose, between (1) voluntary retirement of an indebtedness security and (2) voluntary retirement of an equity security.

(h) For the reasons indicated above, it is the opinion of the Board of Governors that the extension of credit here involved is not of the kind which the margin requirements are intended to regulate and that the transaction described does not involve an unlawful extension of credit as far as this part is concerned.

(i) The foregoing interpretation relates, of course, only to cases of the type described. It should not be regarded as governing any other situations; for example, the interpretation does not deal with cases where securities are being transferred to someone other than the issuer, or to the issuer for a purpose other than immediate retirement. Whether the margin requirements are inapplicable to any such situations would depend upon the relevant facts of actual cases presented.

[27 FR 12346, Dec. 13, 1962]

§ 220.120 [Reserved]

§ 220.121 Applicability of margin requirements to joint account between two creditors.

(a) The Board has recently been asked whether extensions of credit in a joint account between two brokerage firms, a member of a national securities exchange ("Firm X") and a member of the National Association of Securities Dealers ("Firm Y") are subject to the margin requirements of this part (Regulation T). It is understood that similar joint accounts are not uncommon, and it appears that the margin requirements of the regulation are not consistently applied to extensions of credit in the accounts.

(b) When the account in question was opened, Firm Y deposited \$5,000 with Firm X and has made no further deposit in the account, except for the monthly settlement described below. Both firms have the privilege of buying and selling specified securities in the account, but it appears that Firm X initiates most of the transactions therein. Trading volume may run from half a million to a million dollars a month. Firm X carries the "official" ledger of the account and sends Firm Y a monthly statement with a complete record of all transactions effected during the month. Settlement is then

made in accordance with the agreement between the two firms, which provides that profits and losses shall be shared equally on a fifty-fifty basis. However, all transactions are confirmed and reconfirmed between the two on a daily basis.

(c) Section 220.3(a) provides that

All financial relations between a creditor and a customer, whether recorded in one record or in more than one record, shall be included in and be deemed to be part of the customer's general account with the creditor, * * *.

and §220.2(c) defines the term "customer" to include

* * * any person, or any group of persons acting jointly, * * * to or for whom a creditor is extending or maintaining any credit * * *

In the course of a normal month's operations, both Firm X and Firm Y are at one time or another extending credit to the joint account, since both make purchases for the account that are not "settled" until the month's end. Consequently, the account would be a "customer" within the above definition.

(d) Section 220.6(b) provides, with respect to the account of a joint adventure in which a creditor participates, that

* * * the adjusted debit balance of the account shall include, in addition to the items specified in §220.3(d), any amount by which the creditor's contribution to the joint adventure exceeds the contribution which he would have made if he had contributed merely in proportion to his right to share in the profits of the joint adventure.

In addition, the final paragraph of §220.2(c) states that the definition of "customer"

* * * includes any joint adventure in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

(e) The above provisions clearly evince the Board's intent that the regulation shall cover trading accounts in which a creditor participates. If additional confirmation were needed, it is supplied by the fact that the Board found it needful specifically to exempt from ordinary margin requirements

credit extended to certain joint accounts in which a creditor participates. These include the account in which transactions of odd-lot dealers may be financed under § 220.4(f) (4), and the specialist's account under § 220.4(g). Accordingly, the Board concluded that the joint account between Firm X and Firm Y is a "customer" within the meaning of the regulation, and that extensions of credit in the account are subject to margin requirements.

[31 FR 7169, May 17, 1966]

§ 220.122 "Deep in the money put and call options" as extensions of credit.

(a) The Board of Governors has been asked to determine whether the business of selling instruments described as "deep in the money put and call options" would involve an extension of credit for the purposes of the Board's regulations governing margin requirements for securities transactions. Most of such options would be of the "call" type, such as the following proposal that was presented to the Board for its consideration:

If X stock is selling at \$100 per share, the customer would pay about \$3,250 for a contract to purchase 100 shares of X at \$70 per share within a 30-day period. The contract would be guaranteed by an exchange member, as are standard "puts" and "calls". When the contract is made with the customer, the seller, who will also be the writer of the contract, will immediately purchase 100 shares of X at \$100 per share through the guarantor member firm in a margin account. If the customer exercises the option, the shares will be delivered to him; if the option is not exercised, the writer will sell the shares in the margin account to close out the transaction. As a practical matter, it is anticipated that the customer will exercise the option in almost every case.

(b) An ordinary "put" is an option given to a person to sell to the writer of the put a specified amount of securities at a stated price within a certain time. A "call" is an option given to a person to buy from the writer a specified amount of securities at a stated price within a certain time. To be freely saleable, options must be indorsed, or guaranteed, by a member firm of the exchange on which the security is registered. The guarantor charges a fee for this service.

(c) The option embodied in the normal put or call is exercisable either at the market price of the security at the time the option is written, or some "points away" from the market. The price of a normal option is modest by comparison with the margin required to take a position. Writers of normal options are persons who are satisfied with the current price of a security, and are prepared to purchase or sell at that price, with the small profit provided by the fee. Moreover, since a large proportion of all options are never exercised, a person who customarily writes normal options can anticipate that the fee would be clear profit in many cases, and he will not be obligated to buy or sell the stock in question.

(d) The stock exchanges require that the writer of an option deposit and maintain in his margin account with the indorser 30 percent of the current market price in the case of a call (unless he has a long position in the stock) and 25 percent in the case of a put (unless he has a short position in the stock). Many indorsing firms in fact require larger deposits. Under § 220.3(a) of Regulation T, all financial relations between a broker and his customer must be included in the customer's general account, unless specifically eligible for one of the special accounts authorized by § 220.4. Accordingly, the writer, as a customer of the member firm, must make a deposit, which is included in his general account.

(e) In order to prevent the deposit from being available against other margin purchases, and in effect counted twice, § 220.3(d)(5) requires that in computing the customer's adjusted debit balance, there shall be included "the amount of any margin customarily required by the creditor in connection with his endorsement or guarantee of any put, call, or other option". No other margin deposit is required in connection with a normal put or call option under Regulation T.

(f) Turning to the "deep in the money" proposed option contract described above, the price paid by the buyer can be divided into (1) a deposit of 30 percent of the current market

value of the stock, and (2) an additional fixed charge, or fee. To the extent that the price of the stock rose during the 30 ensuing days the proposed instrument would produce results similar to those in the case of an ordinary profitable call, and the contract right would be exercised. But even if the price fell, unlike the situation with a normal option, the buyer would still be virtually certain to exercise his right to purchase before it expired, in order to minimize his loss. The result would be that the buyer would not have a genuine choice whether or not to buy. Rather, the instrument would have made it possible for him, in effect, to purchase stock as of the time the contract was written by depositing 30 percent of the stock's current market price.

(g) It was suggested that the proposed contract is not unusual, since there are examples of ordinary options selling at up to 28 percent of current market value. However, such examples are of options running for 12 months, and reflect expectations of changes in the price of the stock over that period. The 30-day contracts discussed above are not comparable to such 12-month options, because instances of true expectations of price changes of this magnitude over a 30-day period would be exceedingly rare. And a contract that does not reflect such true expectations of price change, plus a reasonable fee for the services of the writer, is not an option in the accepted meaning of the term.

(h) Because of the virtual certainty that the contract right would be exercised under the proposal described above, the writer would buy the stock in a margin account with an indorsing firm immediately on writing the contract. The indorsing firm would extend credit in the amount of 20 percent of the current market price of the stock, the maximum permitted by the current §220.8 (supplement to Regulation T). The writer would deposit the 30 percent supplied by the buyer, and furnish the remaining 50 percent out of his own working capital. His account with the indorsing firm would thus be appropriately margined.

(i) As to the buyer, however, the writer would function as a broker. In

effect, he would purchase the stock for the account, or use, of the buyer, on what might be described as a deferred payment arrangement. Like an ordinary broker, the writer of the contract described above would put up funds to pay for the difference between the price of securities the customer wished to purchase and the customer's own contribution. His only risk would be that the price of the securities would decline in excess of the customer's contribution. True, he would be locked in, and could not liquidate the customer's collateral for 30 days even if the market price should fall in excess of 30 percent, but the risk of such a decline is extremely slight.

(j) Like any other broker who extends credit in a margin account, the writer who was in the business of writing and selling such a contract would be satisfied with a fixed predetermined amount of return on his venture, since he would realize only the fee charged. Unlike a writer of ordinary puts and calls, he would not receive a substantial part of his income from fees on unexercised contract rights. The similarity of his activities to those of a broker, and the dissimilarity to a writer of ordinary options, would be underscored by the fact that his fee would be a fixed predetermined amount of return similar to an interest charge, rather than a fee arrived at individually for each transaction according to the volatility of the stock and other individual considerations.

(k) The buyer's general account with the writer would in effect reflect a debit for the purchase price of the stock and, on the credit side, a deposit of cash in the amount of 30 percent of that price, plus an extension of credit for the remaining 70 percent, rather than the maximum permissible 20 percent.

(l) For the reasons stated above, the Board concluded that the proposed contracts would involve extensions of credit by the writer as broker in an amount exceeding that permitted by the current supplement to Regulation T. Accordingly, the writing of such contracts by a brokerage firm is presently prohibited by such regulation, and any brokerage firm that endorses such a contract would be arranging for

credit in an amount greater than the firm itself could extend, a practice that is prohibited by § 220.7(a).

[35 FR 3280, Feb. 21, 1970]

§ 220.123 Partial delayed issue contracts covering nonconvertible bonds.

(a) During recent years, it has become customary for portions of new issues of nonconvertible bonds and preferred stocks to be sold subject to partial delayed issue contracts, which have customarily been referred to in the industry as "delayed delivery" contracts, and the Board of Governors has been asked for its views as to whether such transactions involve any violations of the Board's margin regulations.

(b) The practice of issuing a portion of a debt (or equivalent) security issue at a date subsequent to the main underwriting has arisen where market conditions made it difficult or impossible, in a number of instances, to place an entire issue simultaneously. In instances of this kind, institutional investors (e.g., insurance companies or pension funds) whose cash flow is such that they expect to have funds available some months in the future, have been willing to subscribe to a portion, to be issued to them at a future date. The issuer has been willing to agree to issue the securities in two or more stages because it did not immediately need the proceeds to be realized from the deferred portion, because it could not raise funds on better terms, or because it preferred to have a certain portion of the issue taken down by an investor of this type.

(c) In the case of such a delayed issue contract, the underwriter is authorized to solicit from institutional customers offers to purchase from the issuer, pursuant to contracts of the kind described above, and the agreement becomes binding at the underwriters' closing, subject to specified conditions. When securities are issued pursuant to the agreement, the purchase price includes accrued interest or dividends, and until they are issued to it, the purchaser does not, in the case of bonds, have rights under the trust indenture, or, in the case of preferred stocks, voting rights.

(d) Securities sold pursuant to such arrangements are high quality debt issues (or their equivalent). The purchasers buy with a view to investment and do not resell or otherwise dispose of the contract prior to its completion. Delayed issue arrangements are not acceptable to issuers unless a substantial portion of an issue, not less than 10 percent, is involved.

(e) Sections 3(a) (13) and (14) of the Securities Exchange Act of 1934 provide that an agreement to purchase is equivalent to a purchase, and an agreement to sell to a sale. The Board has hitherto expressed the view that credit is extended at the time when there is a firm agreement to extend such credit (1968 Federal Reserve Bulletin 328; 12 CFR 207.101; ¶ 6800 Published Interpretations of the Board of Governors). Accordingly, in instances of the kind described above, the issuer may be regarded as extending credit to the institutional purchaser at the time of the underwriters' closing, when the obligations of both become fixed.

(f) Section 220.7(a) of the Board's Regulation T (12 CFR 220.7(a)), with an exception not applicable here, forbids a creditor subject to that regulation to arrange for credit on terms on which the creditor could not itself extend the credit. Sections 220.4(c) (1) and (2) (12 CFR 220.4(c) (1) and (2)) provide that a creditor may not sell securities to a customer except in good faith reliance upon an agreement that the customer will promptly, and in no event in more than 7 full business days, make full cash payment for the securities. Since the underwriters in question are creditors subject to the regulation, unless some specific exception applies, they are forbidden to arrange for the credit described above. This result follows because payment is not made until more than 7 full business days have passed from the time the credit is extended.

(g) However, § 220.4(c)(3) provides that:

If the security when so purchased is an unissued security, the period applicable to the transaction under subparagraph (2) of this paragraph shall be 7 days after the date on which the security is made available by the issuer for delivery to purchasers.

(h) In interpreting §220.4(c)(3), the Board has stated that the purpose of the provision:

*** is to recognize the fact that, when an issue of securities is to be issued at some future fixed date, a security that is part of such issue can be purchased on a "when-issued" basis and that payment may reasonably be delayed until after such date of issue, subject to other basic conditions for transactions in a special cash account. (1962 Federal Reserve Bulletin 1427; 12 CFR 220.118; ¶ 5996, Published Interpretations of the Board of Governors.)

In that situation, the Board distinguished the case of mutual fund shares, which technically are not issued until the certificate can be delivered by the transfer agent. The Board held that mutual fund shares must be regarded as issued at the time of purchase because they are:

*** essentially available upon purchase to the same extent as outstanding securities. The mechanics of their issuance and of the delivery of certificates are not significantly different from the mechanics of transfer and delivery of certificates for shares of outstanding securities, and the issuance of mutual fund shares is not a future event in the sense that would warrant the extension of the time for payment beyond that afforded in the case of outstanding securities. (ibid.)

The issuance of debt securities subject to delayed issue contracts, by contrast with that of mutual fund shares, which are in a status of continual underwriting, is a specific single event taking place at a future date fixed by the issuer with a view to its need for funds and the availability of those funds under current market conditions.

(i) For the reasons stated above the Board concluded that the nonconvertible debt and preferred stock subject to delayed issue contracts of the kind described above should not be regarded as having been issued until delivered, pursuant to the agreement, to the institutional purchaser. This interpretation does not apply, of course, to fact situations different from that described in this section.

[36 FR 2777, Feb. 10, 1971]

§ 220.124 Installment sale of tax-shelter programs as "arranging" for credit.

(a) The Board has been asked whether the sale by brokers and dealers of tax-shelter programs containing a provision that payment for the program may be made in installments would constitute "arranging" for credit in violation of this part 220. For the purposes of this interpretation, the term "tax-shelter program" means a program which is required to be registered pursuant to section 5 of the Securities Act of 1933 (15 U.S.C. section 77e), in which tax benefits, such as the ability to deduct substantial amounts of depreciation or oil exploration expenses, are made available to a person investing in the program. The programs may take various legal forms and can relate to a variety of industries including, but not limited to, oil and gas exploration programs, real estate syndications (except real estate investment trusts), citrus grove developments and cattle programs.

(b) The most common type of tax-shelter program takes the form of a limited partnership. In the case of the programs under consideration, the investor would commit himself to purchase and the partnership would commit itself to sell the interests. The investor would be entitled to the benefits, and become subject to the risks of ownership at the time the contract is made, although the full purchase price is not then required to be paid. The balance of the purchase price after the downpayment usually is payable in installments which range from 1 to 10 years depending on the program. Thus, the partnership would be extending credit to the purchaser until the time when the latter's contractual obligation has been fulfilled and the final payment made.

(c) With an exception not applicable here, §220.7(a) of Regulation T provides that:

A creditor [broker or dealer] may arrange for the extension or maintenance of credit to or for any customer of such creditor by any person upon the same terms and conditions as those upon which the creditor, under the provisions of this part, may himself extend

or maintain such credit to such customer, but only such terms and conditions * * *

(d) In the case of credit for the purpose of purchasing or carrying securities (purpose credit), § 220.8 of the regulation (the Supplement to Regulation T) does not permit any loan value to be given securities that are not registered on a national securities exchange, included on the Board's OTC Margin List, or exempted by statute from the regulation.

(e) The courts have consistently held investment programs such as those described above to be "securities" for purpose of both the Securities Act of 1933 and the Securities Exchange Act of 1934. The courts have also held that the two statutes are to be construed together. Tax-shelter programs, accordingly, are securities for purposes of Regulation T. They also are not registered on a national securities exchange, included on the Board's OTC Margin List, or exempted by statute from the regulation.

(f) Accordingly, the Board concludes that the sale by a broker/dealer of tax-shelter programs containing a provision that payment for the program may be made in installments would constitute "arranging" for the extension of credit to purchase or carry securities in violation of the prohibitions of §§ 220.7(a) and 220.8 of Regulation T.

[37 FR 6568, Mar. 31, 1972]

§ 220.125–220.126 [Reserved]

§ 220.127 Independent broker/dealers arranging credit in connection with the sale of insurance premium funding programs.

(a) The Board's September 5, 1972, clarifying amendment to § 220.4(k) set forth that creditors who arrange credit for the acquisition of mutual fund shares and insurance are also permitted to sell mutual fund shares without insurance under the provisions of the special cash account. It should be understood, of course, that such account provides a relatively short credit period of up to 7 business days even with so-called cash transactions. This amendment was in accordance with the

Board's understanding in 1969, when the insurance premium funding provisions were adopted in § 220.4(k), that firms engaged in a general securities business would not also be engaged in the sale and arranging of credit in connection with such insurance premium funding programs.

(b) The 1972 amendment eliminated from § 220.4(k) the requirement that, to be eligible for the provisions of the section, a creditor had to be the issuer, or a subsidiary or affiliate of the issuer, of programs which combine the acquisition of both mutual fund shares and insurance. Thus the amendment permits an independent broker/dealer to sell such a program and to arrange for financing in that connection. In reaching such decision, the Board again relied upon the earlier understanding that independent broker/dealers who would sell such programs would not be engaged in transacting a general securities business.

(c) In response to a specific view recently expressed, the Board agrees that under Regulation T:

* * * a broker/dealer dealing in special insurance premium funding products can only extend credit in connection with such products or in connection with the sale of shares of registered investment companies under the cash accounts * * * (and) cannot engage in the general securities business or sell any securities other than shares * * * (in) registered investment companies through a cash account or any other manner involving the extension of credit.

(d) There is a way, of course, as has been indicated, that an independent broker/dealer might be able to sell other than shares of registered investment companies without creating any conflict with the regulation. Such sales could be executed on a "funds on hand" basis and in the case of payment by check, would have to include the collection of such check. It is understood from industry sources, however, that few if any independent broker/dealers engage solely in a "fund on hand" type of operation.

[38 FR 11066, May 4, 1973]

§ 220.128 Treatment of simultaneous long and short positions in the same margin account when put or call options or combinations thereof on such stock are also outstanding in the account.

(a) The Board was recently asked whether under Regulation T, "Credit by Brokers and Dealers" (12 CFR part 220), if there are simultaneous long and short positions in the same security in the same margin account (often referred to as a short sale "against the box"), such positions may be used to supply the place of the deposit of margin ordinarily required in connection with the guarantee by a creditor of a put or call option or combination thereof on such stock.

(b) The applicable provisions of regulation T are §220.3(d)(3) and (5) and §220.3(g)(4) and (5) which provide as follows:

(d) * * * the adjusted debit balance of a general account * * * shall be calculated by taking the sum of the following items:

* * * * *

(3) The current market value of any securities (other than unissued securities) sold short in the general account plus, for each security (other than an exempted security), such amount as the board shall prescribe from time to time in §220.8(d) (the supplement to regulation T) as the margin required for such short sales, except that such amount so prescribed in such §220.8(d) need not be included when there are held in the general account * * * the same securities or securities exchangeable or convertible within 90 calendar days, without restriction other than the payment of money, into such securities sold short;

* * * * *

(5) The amount of any margin customarily required by the creditor in connection with his endorsement or guarantee of any put, call, or other option;

* * * * *

(g) * * * (4) Any transaction which serves to meet the requirements of paragraph (e) of this section or otherwise serves to permit any offsetting transaction in an account shall, to that extent, be unavailable to permit any other transaction in such account.

(5) For the purposes of this part (regulation T), if a security has maximum loan value under paragraph (c)(1) of this section in a general account, or under §220.4(j) in a special convertible debt security account, a sale of the same security (even though not the same certificate) in such account shall be deemed to be a long sale and shall not be deemed to be or treated as a short sale.

(c) Rule 431 of the New York Stock Exchange requires that a creditor obtain a minimum deposit of 25 percent of the current market value of the optioned stock in connection with his issuance or guarantee of a put, and at least 30 percent in the case of a call (and that such position be "marked to the market"), but permits a short position in the stock to serve in lieu of the required deposit in the case of a put and a long position to serve in the case of a call. Thus, where the appropriate position is held in an account, that position may serve as the margin required by §220.3(d)(5).

(d) In a short sale "against the box," however, the customer is both long and short the same security. He may have established either position, properly margined, prior to taking the other, or he may have deposited fully paid securities in his margin account on the same day he makes a short sale of such securities. In either case, he will have directed his broker to borrow securities elsewhere in order to make delivery on the short sale rather than using his long position for this purpose (see also 17 CFR 240.3b-3).

(e) Generally speaking, a customer makes a short sale "against the box" for tax reasons. Regulation T, however, provides in §220.3(g) that the two positions must be "netted out" for the purposes of the calculations required by the regulation. Thus, the board concludes that neither position would be available to serve as the deposit of margin required in connection with the endorsement by the creditor of an option.

(f) A similar conclusion obtains under §220.3(d)(3). That section provides, in essence, that the margin otherwise required in connection with a short sale need not be included in the account if the customer has in the account a long position in the same security. In §220.3(g) (4), however, it is provided that "[A]ny transaction which

* * * serves to permit any offsetting transaction in an account shall, to that extent, be unavailable to permit any other transaction in such account.” Thus, if a customer has, for example, a long position in a security and that long position has been used to supply the margin required in connection with a short sale of the same security, then the long position is unavailable to serve as the margin required in connection with the creditor’s endorsement of a call option on such security.

(g) A situation was also described in which a customer has purported to establish simultaneous offsetting long and short positions by executing a “cross” or wash sale of the security on the same day. In this situation, no change in the beneficial ownership of stock has taken place. Since there is no actual “*contra*” party to either transaction, and no stock has been borrowed or delivered to accomplish the short sale, such fictitious positions would have no value for purposes of the Board’s margin regulations. Indeed, the adoption of such a scheme in connection with an overall strategy involving the issuance, endorsement, or guarantee of put or call options or combinations thereof appears to be manipulative and may have been employed for the purpose of circumventing the requirements of the regulations.

[38 FR 12098, May 9, 1973]

§§ 220.129–220.130 [Reserved]

§ 220.131 Application of the arranging section to broker-dealer activities under SEC Rule 144A.

(a) The Board has been asked whether the purchase by a broker-dealer of debt securities for resale in reliance on Rule 144A of the Securities and Exchange Commission (17 CFR 230.144A)¹ may be considered an “arranging of credit permitted as an “investment banking service” under §220.13(a) of Regulation T.

(b) SEC Rule 144A provides a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resales of restricted securities

to *qualified institutional buyers*, as defined in the rule. In general, a *qualified institutional buyer* is an institutional investor that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the buyer. Registered broker-dealers need only own and invest on a discretionary basis at least \$10 million of securities in order to purchase as principal under the rule. Section 4(2) of the Securities Act of 1933 provides an exemption from the registration requirements for “transactions by an issuer not involving any public offering.” Securities acquired in a transaction under section 4(2) cannot be resold without registration under the Act or an exemption therefrom. Rule 144A provides a safe harbor exemption for resales of such securities. Accordingly, broker-dealers that previously acted only as agents in intermediating between issuers and purchasers of privately-placed securities, due to the lack of such a safe harbor, now may purchase privately-placed securities from issuers as principal and resell such securities to “qualified institutional buyers” under Rule 144A.

(c) The Board has consistently treated the purchase of a privately-placed debt security as an extension of credit subject to the margin regulations. If the issuer uses the proceeds to buy securities, the purchase of the privately-placed debt security by a creditor represents an extension of “purpose credit” to the issuer. Section 7(c) of the Securities Exchange Act of 1934 prohibits the extension of purpose credit by a creditor if the credit is unsecured, secured by collateral other than securities, or secured by any security (other than an exempted security) in contravention of Federal Reserve regulations. If a debt security sold pursuant to Rule 144A represents purpose credit and is not properly collateralized by securities, the statute and Regulation T can be viewed as preventing the broker-dealer from taking the security into inventory in spite of the fact that the broker-dealer intends to immediately resell the debt security.

(d) Under §220.13 of Regulation T, a creditor may arrange credit it cannot itself extend if the arrangement is an

¹ Rule 144A, 17 CFR 230.144A, was originally published in the FEDERAL REGISTER at 55 FR 17933, April 30, 1990.

“investment banking service” and the credit does not violate Regulations G and U. Investment banking services are defined to include, but not be limited to, “underwritings, private placements, and advice and other services in connection with exchange offers, mergers, or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred-payment provisions.” To comply with Regulations G and U where the proceeds of debt securities sold under Rule 144A may be used to purchase or carry margin stock and the debt securities are secured in whole or in part, directly or indirectly by margin stock (see 12 CFR 207.2(f), 207.112, and 221.2(g)), the margin requirements of the regulations must be met.

(e) The SEC’s objective in adopting Rule 144A is to achieve “a more liquid and efficient institutional resale market for unregistered securities.” To further this objective, the Board believes it is appropriate for Regulation T purposes to characterize the participation of broker-dealers in this unique and limited market as an “investment banking service.” The Board is therefore of the view that the purchase by a creditor of debt securities for resale pursuant to SEC Rule 144A may be considered an investment banking service under the arranging section of Regulation T. The market-making activities of broker-dealers who hold themselves out to other institutions as willing to buy and sell Rule 144A securities on a regular and continuous basis may also be considered an arranging of credit permissible under § 220.13(a) of Regulation T.

[Reg. T, 55 FR 29566, July 20, 1990]

§ 220.132 Credit to brokers and dealers.

For text of this interpretation, see § 207.114 of this subchapter.

[Reg. T, 61 FR 60167, Nov. 26, 1996]

PART 221—CREDIT BY BANKS AND PERSONS OTHER THAN BROKERS OR DEALERS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCK (REGULATION U)

Sec.

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- 221.2 Definitions.
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- 221.101 Determination and effect of purpose of loan.
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- 221.106 Reliance in “good faith” on statement of purpose of loan.
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- 221.111 Contribution to joint venture as extension of credit when the contribution is disproportionate to the contributor’s share in the venture’s profits or losses.
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- 221.114 Bank loans to purchase stock of American Telephone and Telegraph Company under Employees’ Stock Plan.
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- 221.117 When bank in “good faith” has not relied on stock as collateral.
- 221.118 Bank arranging for extension of credit by corporation.
- 221.119 Applicability of plan-lender provisions to financing of stock options and