Regulation D

Reserve Requirements of Depository Institutions

12 CFR 204; as amended effective July 30, 1998

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SECTION 204.1--Authority, Purpose and Scope

(a) Authority. This part * is issued under the authority of section 19 (12 USC 461 et seq.) and other provisions of the Federal Reserve Act and of section 7 of the International Banking Act of 1978 (12 USC 3105).

(b) Purpose. This part relates to reserves that depository institutions are required to maintain for the purpose of facilitating the implementation of monetary policy by the Federal Reserve System.

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(c) Scope.

(1) The following depository institutions are required to maintain reserves in accordance with this part:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813(h)) or any bank that is eligible to apply to become an insured bank under section 5 of such act (12 USC 1815);

(ii) Any savings bank or mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813(f), (g));

(iii) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 USC 1752(7)) or any credit union that is eligible to apply to become an insured credit union under section 201 of such act (12 USC 1781);

(iv) Any member as defined in section 2 of the Federal Home Loan Bank Act (12 USC 1422(4)); and

(v) Any insured institution as defined in section 401 of the National Housing Act (12 USC 1724(a)) or any institution which is eligible to apply to become an insured institution under section 403 of such act (12 USC 1726).

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(2) Except as may be otherwise provided by the Board, a foreign bank's branch or agency located in the United States is required to comply with the provisions of this part in the same manner and to the same extent as if the branch or agency were a member bank, if its parent foreign bank (i) has total worldwide consolidated bank assets in excess of $1 billion; or (ii) is controlled by a foreign company or by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1 billion. In addition, any other foreign bank's branch located in the United States that is eligible to apply to become an insured bank under section 5 of the Federal Deposit Insurance Act (12 USC 1815) is required to maintain reserves in accordance with this part as a nonmember depository institution.

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(3) Except as may be otherwise provided by the Board, an Edge corporation (12 USC 611 et seq.) or an agreement corporation (12 USC 601 et seq.) is required to comply with the provisions of this part in the same manner and to the same extent as a member bank.

(4) This part does not apply to any financial institution that (i) is organized solely to do business with other financial institutions; (ii) is owned primarily by the financial institutions with which it does business; and (iii) does not do business with the general public.

(5) The provisions of this part do not apply to any deposit that is payable only at an office located outside the United States.

SECTION 204.2--Definitions

For purposes of this part, the following definitions apply unless otherwise specified:

(a)(1) "Deposit" means--

(i) the unpaid balance of money or its equivalent received or held by a depository institution in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to an account, including interest credited, or which is evidenced by an instrument on which the depository institution is primarily liable;

(ii) money received or held by a depository institution, or the credit given for money or its equivalent received or held by the depository institution in the usual course of business for a special or specific purpose, regardless of the legal relationships established thereby, including escrow funds, funds held as security for securities loaned by the depository institution, funds deposited as advance payment on subscriptions to United States government securities, and funds held to meet its acceptances;

(iii) an outstanding teller's check, or an outstanding draft, certified check, cashier's check, money order, or officer's check drawn on the depository institution, issued in the usual course of business for any purpose, including payment for services, dividends, or purchases;

(iv) any due bill or other liability or undertaking on the part of a depository institution to sell or deliver securities to, or purchase securities for the account of, any customer (including another depository institution), involving either the receipt of funds by the depository institution, regardless of the use of the proceeds, or a debit to an account of the customer before the securities are delivered. A deposit arises thereafter, if after three business days from the date of issuance of the obligation, the depository institution does not deliver the securities purchased or does not fully collateralize its obligation with securities similar to the securities purchased. A security is similar if it is of the same type and if it is of comparable maturity to that purchased by the customer;

(v) any liability of a depository institution's affiliate that is not a depository institution, on any promissory note, acknowledgment of advance, due bill, or similar obligation (written or oral), with a maturity of less than one and one-half years, to the extent that the proceeds are used to supply or to maintain the availability of funds (other than capital) to the depository institution, except any such obligation that, had it been issued directly by the depository institution, would not constitute a deposit. If an obligation of an affiliate of a depository institution is regarded as a deposit and is used to purchase assets from the depository institution, the maturity of the deposit is determined by the shorter of the maturity of the obligation issued or the remaining maturity of the assets purchased. If the proceeds from an affiliate's obligation are placed in the depository institution in the form of a reservable deposit, no reserves need be maintained against the obligation of the affiliate since reserves are required to be maintained against the deposit issued by the depository institution. However, the maturity of the deposit issued to the affiliate shall be the shorter of the maturity of the affiliate's obligation or the maturity of the deposit;

(vi) credit balances;

(vii) any liability of a depository institution on any promissory note, acknowledgment of advance, banker's acceptance, or similar obligation (written or oral), including mortgage-backed bonds, that is issued or undertaken by a depository institution as a means of obtaining funds, except any such obligation that--

(A) is issued or undertaken and held for the account of--

(1) an office located in the United States of another depository institution, foreign bank, Edge or agreement corporation, or New York Investment (article XII) Company;

(2) the United States government or an agency thereof; or

(3) the Export-Import Bank of the United States, Minbanc Capital Corporation, the Government Development Bank for Puerto Rico, a Federal Reserve Bank, a Federal

Home Loan Bank, or the National Credit Union Administration Central Liquidity Facility;

(B) arises from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States government or any agency thereof that the depository institution is obligated to repurchase;

(C) is not insured by a federal agency, is subordinated to the claims of depositors, has a weighted average maturity of five years or more, and is issued by a depository institution with the approval of, or under the rules and regulations of, its primary federal supervisor;

(D) arises from a borrowing by a depository institution from a dealer in securities, for one business day, of proceeds of a transfer of deposit credit in a Federal Reserve Bank or other immediately available funds, (commonly referred to as "federal funds"), received by such dealer on the date of the loan in connection with clearance of securities transactions; or

(E) arises from the creation, discount and subsequent sale by a depository institution of its banker's acceptance of the type described in paragraph 7 of section 13 of the Federal Reserve Act (12 USC 372);

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(viii) any liability of a depository institution that arises from the creation after June 20, 1983, of a banker's acceptance that is not of the type described in paragraph 7 of section 13 of the Federal Reserve Act (12 USC 372) except any such liability held for the account of an entity specified in section 204.2(a)(1)(vii)(A).

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(2) "Deposit" does not include--

(i) trust funds received or held by the depository institution that it keeps properly segregated as trust funds and apart from its general assets or which it deposits in another institution to the credit of itself as trustee or other fiduciary. If trust funds are deposited with the commercial department of the depository institution or otherwise mingled with its general assets, a deposit liability of the institution is created;

(ii) an obligation that represents a conditional, contingent or endorser's liability;

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(iii) obligations, the proceeds of which are not used by the depository institution for purposes of making loans, investments, or maintaining liquid assets such as cash or "due from" depository institutions or other similar purposes. An obligation issued for the purpose of raising funds to purchase business premises, equipment, supplies, or similar assets is not a deposit;

(iv) accounts payable;

(v) hypothecated "deposits" created by payments on an installment loan where (A) the amounts received are not used immediately to reduce the unpaid balance due on the loan until the sum of the payments equals the entire amount of loan principal and interest; (B) and where such amounts are irrevocably assigned to the depository institution and cannot be reached by the borrower or creditors of the borrower;

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(vi) dealer reserve and differential accounts that arise from the financing of dealer installment accounts receivable, and which provide that the dealer may not have access to the funds in the account until the installment loans are repaid, as long as the depository institution is not actually (as distinguished from contingently) obligated to make credit or funds available to the dealer;

(vii) a dividend declared by a depository institution for the period intervening between the date of the declaration of the dividend and the date on which it is paid;

(viii) an obligation representing a "pass-through account," as defined in this section;

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(ix) an obligation arising from the retention by the depository institution of no more than a 10 percent interest in a pool of conventional one- to four-family mortgages that are sold to third parties;

(x) an obligation issued to a state or municipal housing authority under a loan-to-lender program involving the issuance of tax exempt bonds and the subsequent lending of the proceeds to the depository institution for housing finance purposes;

(xi) shares of a credit union held by the National Credit Union Administration or the National Credit Union Administration Central Liquidity Facility under a statutorily authorized assistance program; and

(xii) any liability of a United States branch or agency of a foreign bank to another United States branch or agency of the same foreign bank, or the liability of the United States office of an Edge corporation to another United States office of the same Edge corporation.

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(b)(1) "Demand deposit" means a deposit that is payable on demand, or a deposit issued with an original maturity or required notice period of less than seven days, or a deposit representing funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. Demand deposits may be in the form of--

(i) checking accounts;

(ii) certified, cashier's, teller's and officer's checks (including such checks issued in payment of dividends);

(iii) traveler's checks and money orders that are primary obligations of the issuing institution;

(iv) checks or drafts drawn by, or on behalf of, a non-United States office of a depository institution on an account maintained at any of the institution's United States offices;

(v) letters of credit sold for cash or its equivalent;

(vi) withheld taxes, withheld insurance and other withheld funds;

(vii) time deposits that have matured or time deposits upon which the contractually required notice of withdrawal was given and the notice period has expired and which have not been renewed (either by action of the depositor or automatically under the terms of the deposit agreement); and

(viii) an obligation to pay, on demand or within six days, a check (or other instrument, device, or arrangement for the transfer of funds) drawn on the depository institution, where the account of the institution's customer already has been debited.

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(2) The term "demand deposit" also means deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which the depositor is

authorized to make withdrawals or transfers in excess of the withdrawal or transfer limitations specified in section 204.2(d)(2) for such an account and the account is not a NOW account, or an ATS account or other account that meets the criteria specified in either section 204.2(b)(3)(ii) or (iii) below.

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(3) "Demand deposit" does not include--

(i) any account that is a time deposit or a savings deposit under this part;

(ii) any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and either--

(A) is subject to check, draft, negotiable order of withdrawal, share draft, or similar item, such as an account authorized by 12 USC 1832(a) (NOW account) and a savings deposit described in section 204.2(d)(2), provided that the depositor is eligible to hold a NOW account; or

(B) from which the depositor is authorized to make transfers by preauthorized transfer or telephonic (including data transmission) agreement, order or instruction to another account or to a third party, provided that the depositor is eligible to hold a NOW account;

(iii) any deposit or account on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to the depository institution itself or through transfer of credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such other account, such as accounts authorized by 12 USC 371a (automatic transfer account or ATS account), provided that the depositor is eligible to hold an ATS account; or

(iv) IBF time deposits meeting the requirements of section 204.8(a)(2).

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(c)(1) "Time deposit" means--

(i) a deposit that the depositor does not have a right and is not permitted to make withdrawals from within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit. 1 A time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial with drawal. If such additional early withdrawal penalties are not imposed, the account ceases to be a time deposit. The account may become a savings deposit if it meets the requirements for a saving deposit; otherwise it becomes a transaction account. "Time deposit" includes funds--

(A) payable on a specified date not less than seven days after the date of deposit;

(B) payable at the expiration of a specified time not less than seven days after the date of deposit;

(C) payable only upon written notice that is actually required to be given by the depositor not less than seven days prior to withdrawal;

(D) held in "club" accounts (such as "Christmas club" accounts and "vacation club" accounts that are not maintained as "savings deposits") that are deposited under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than three months even though some of the deposits may be made within six days from the end of the period; or

(E) share certificates and certificates of indebtedness issued by credit unions, and certificate accounts and notice accounts issued by savings and loan associations;

(ii) a "savings deposit;"

(iii) an "IBF time deposit" meeting the requirements of section 204.8(a)(2); and

(iv) borrowings, regardless of maturity, represented by a promissory note, an acknowledgment of advance, or similarobligation described in section 204.2(a)(1)(vii) that is issued to, or any banker's acceptance (other than the type described in 12 USC 372) of the depository institution held by--

(A) any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States;

(B) any office located outside the United States of a foreign bank;

(C) a foreign national government, or an agency or instrumentality thereof, 2 engaged principally in activities which are ordinarily performed in the United States by governmental entities,

(D) an international entity of which the United States is a member, or

(E) any other foreign, international, or supranational entity specifically designated by the Board. 3

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(2) A time deposit may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, or statement, or by book entry or otherwise.

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(d)(1) "Savings deposit" means a deposit or account with respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. The term "savings deposit" includes a regular share account at a credit union and a regular account at a savings and loan association.

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(2) The term "savings deposit" also means: A deposit or account, such as an account commonly known as a passbook savings account, a statement savings account, or as a money market deposit account (MMDA), that otherwise meets the requirements of section 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers and withdrawals, or a combination of such transfers and withdrawals, per calendar month or statement cycle (or similar period) of at least four weeks, to another account (including a transaction account) of the depositor at the same institution or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, and no more than three of the six such transfers may be made by check, draft, debit card, or similar order made by the depositor and payable to third parties. A "preauthorized transfer" includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order received through an automated clearinghouse (ACH)) or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same

depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine, or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals. 4

(3) A deposit may continue to be classified as a savings deposit even if the depository institution exercises its right to require notice of withdrawal.

(4) "Savings deposit" does not include funds deposited to the credit of the depository institution's own trust department where the funds involved are utilized to cover checks or drafts. Such funds are "transaction accounts."

(e) "Transaction account" means a deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, or other similar device for the purpose of making payments or transfers to third persons or others or from which the depositor may make third-party payments at an automated teller machine (ATM) or a remote service unit, or other electronic device, including by debit card, but the term does not include savings deposits or accounts described in section 204.2(d)(2) even though such accounts permit third-party transfers. "Transaction account" includes--

(1) demand deposits;

(2) deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and that are subject to check, draft, negotiable order of withdrawal, share draft, or other similar item, except accounts described in section 204.2(d)(2) (savings deposits), but including accounts authorized by 12 USC 1832(a) (NOW accounts).

(3) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and from which withdrawals may be made automatically through payment to

the depository institution itself or through transfer of credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to such accounts, except accounts described in section 204.2(d)(2), but including accounts authorized by 12 USC 371a (automatic transfer accounts or ATS accounts).

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(4) Deposits or accounts on which the depository institution has reserved the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account and under the terms of which, or by practice of the depository institution, the depositor is permitted or authorized to make more than six withdrawals per month or statement cycle (or similar period) of at least four weeks for purposes of transferring funds to another account of the depositor at the same institution (including a "transaction account") or for making payment to a third party by means of preauthorized transfer, or telephonic (including data transmission) agreement, order or instruction, except accounts described in section 204.2(d)(2). An account that authorizes more than six such withdrawals in a calendar month, or statement cycle (or similar period) of at least four weeks, is a "transaction account" whether or not more than six such transfers are made during such period. A "preauthorized transfer" includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order receivedthrough an automated clearinghouse (ACH)), or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a "transaction account" by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.

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(5) Deposits or accounts maintained in connection with an arrangement that permits the depositor to obtain credit directly or indirectly through the drawing of a negotiable or nonnegotiable check, draft, order or instruction or other similar device (including telephone or electronic order or instruction) on the issuing institution that can be used for the purpose of making payments or transfers to third persons or others, or to a deposit account of the depositor.

(6) All deposits other than time and savings deposits, including those accounts that are time and savings deposits in form but that the Board has determined, by rule or order, to be transaction accounts.

(f)(1) "Nonpersonal time deposit" means--

(i) a time deposit, including an MMDA or any other savings deposit, representing funds in which any beneficial interest is held by a depositor which is not a natural person;

(ii) a time deposit, including an MMDA or any other savings deposit, that repre sents funds deposited to the credit of a depositor that is not a natural person, other than a deposit to the credit of a trustee or other fiduciary if the entire beneficial interest in the deposit is held by one or more natural persons;

(iii) a transferable time deposit. A time deposit is transferable unless it contains a specific statement on the certificate, instrument, passbook, statement or other form representing the account that it is not transferable. A time deposit that contains a specific statement that it is not transferable is not regarded as transferable even if the following transactions can be effected: a pledge as collateral for a loan, a transaction that occurs due to circumstances arising from death, incompetency, marriage, divorce, attachment, or otherwise by operation of law or a transfer on the books or records of the institution; and

(iv) a time deposit represented by a promissory note, an acknowledgment of advance, or similar obligation described in section 204.2(a)(1)(vii) that is issued to, or any banker's acceptance (other than the type described in 12 USC 372) of the depository institution held by--

(A) any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States,

(B) any office located outside the United States of a foreign bank,

(C) a foreign national government, or an agency or instrumentality thereof, 5 engaged principally in activities which are ordinarily performed in the United States by governmental entities,

(D) an international entity of which the United States is a member, or

(E) any other foreign, international, or supranational entity specifically designated by the Board. 6

(2) "Nonpersonal time deposit" does not include nontransferable time deposits to the credit of or in which the entire beneficial interest is held by an individual pursuant to an individual retirement account or Keogh (H. R. 10) plan under 26 USC 408, 401, or nontransferable time deposits held by an employer as part of an unfunded deferred-compensation plan established pursuant to subtitle D of the Revenue Act of 1978 (Pub. L. No. 95-600, 92 Stat. 2763), or a "401(k) plan" under 26 USC 401(k).

(g) "Natural person" means an individual or a sole proprietorship. The term does not mean a corporation owned by an individual, a partnership or other association.

(h) "Eurocurrency liabilities" means--

(1) For a depository institution or an Edge or agreement corporation organized under the laws of the United States, the sum, if positive, of the following:

(i) net balances due to its non-United States offices and its international banking facilities (IBFs) from its United States offices;

(ii)(A) for a depository institution organized under the laws of the United States, assets (including participations) acquired from its United States offices and held by its non-United States offices, by its IBF, or by non-United States offices of an affiliated Edge or agreement corporation; 7 or

(B) for an Edge or agreement corporation, assets (including participations) acquired from its United States offices and held by its non-United States offices, by its IBF, by non-United States offices of its U.S. or foreign parent institution, or by non-United States offices of an affiliated Edge or agreement corporation; 7 and

(iii) credit outstanding from its non-United States offices to United States residents (other than assets acquired and net balances due from its United States offices), except credit extended (A) from its non-United States offices in the aggregate amount of $100,000 or less to any United States resident, (B) by a non-United States office that at no time during the computation period had credit outstanding to United States residents exceeding $1 million, (C) to an international banking facility, or (D) to an institution that will be maintaining reserves on such credit pursuant to this part. Credit extended from non-United States offices or from IBFs to a foreign branch, office, subsidiary, affiliate, or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations is not regarded as credit extended to a United States resident if the proceeds will be used to finance the operations outside the United States of the borrower or of other foreign affiliates of the controlling domestic corporation(s).

(2) For a United States branch or agency of a foreign bank, the sum, if positive, of the following:

(i) net balances due to its foreign bank (including offices thereof located outside the United States) and its international banking facility after deducting an amount equal to 8 percent of the following: the United States branch's or agency's total assets less the sum of (A) cash items in process of collection; (B) unposted debits; (C) demand balances due from depository institutions organized under the laws of the United States and from other foreign banks; (D) balances due from foreign central banks; and (E) positive net balances due from its IBF, its foreign bank, and the foreign bank's United States and non-United States offices; and

(ii) assets (including participations) acquired from the United States branch or agency (other than assets required to be sold by federal or state supervisory authorities) and held by its foreign bank (including offices thereof located outside the United States), by its parent holding company, by non-United States offices or an IBF of an affiliated Edge or agreement corporation, or by its IBFs. 8

(i)(1) "Cash item in process of collection" means--

(i) checks in the process of collection, drawn on a bank or other depository institution that are payable immediately upon presentation in the United States, including checks forwarded to a Federal Reserve Bank in process of collection and checks on hand that will be presented for payment or forwarded for collection on the following business day;

(ii) government checks drawn on the Treasury of the United States that are in the process of collection; and

(iii) such other items in the process of collection, that are payable immediately upon presentation in the United States and that are customarily cleared or collected by depository institutions as cash items, including--

(A) drafts payable through another depository institution;

(B) matured bonds and coupons (including bonds and coupons that have been called and are payable on presentation);

(C) food coupons and certificates;

(D) postal and other money orders, and traveler's checks;

(E) amounts credited to deposit accounts in connection with automated payment arrangements where such credits are made one business day prior to the scheduled payment date to insure that funds are available on the payment date;

(F) commodity or bill of lading drafts payable immediately upon presentation in the United States;

(G) returned items and unposted debits; and

(H) broker security drafts.

(2) "Cash item in process of collection" does not include items handled as noncash collections and credit card sales slips and drafts.

(j) "Net transaction accounts" means the total amount of a depository institution's transaction accounts less the deductions allowed under the provisions of section 204.3.

(k)(1) "Vault cash" means United States currency and coin owned and held by a depository institution that may, at any time, be used to satisfy depostitors' claims.

(2) "Vault cash" includes United States currency and coin in transit to a Federal Reserve Bank or a correspondent depository institution for which the reporting depository

institution has not yet received credit, and United States currency and coin in transit from a Federal Reserve Bank or a correspondent depository institution when the reporting depository institution's account at the Federal Reserve or correspondent bank has been charged for such shipment.

(3) Silver and gold coin and other currency and coin whose numismatic or bullion value is substantially in excess of face value is not vault cash for purposes of this part.

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(l) "Pass-through account" means a balance maintained by a depository institution that is not a member bank, by a U.S. branch or agency of a foreign bank, or by an Edge or agreement corporation, (1) in an institution that maintains required reserve balances at a Federal Reserve Bank, (2) in a Federal Home Loan Bank, (3) in the National Credit Union Administration Central Liquidity Facility, or (4) in an institution that has been authorized by the Board to pass through required reserve balances if the institution, Federal Home Loan Bank, or National Credit Union Administration Central Liquidity Facility maintains the funds in the form of a balance in a Federal Reserve Bank of which it is a member or at which it maintains an account in accordance with rules and regulations of the Board.

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(m)(1) "Depository institution" means--

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813(h)) or any bank that is eligible to apply to become an insured bank under section 5 of such act (12 USC 1815);

(ii) any savings bank or mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 USC 1813(f), (g));

(iii) any insured credit union as defined in section 101 of the Federal Credit Union Act (12 USC 1752(7)) or any credit union that is eligible to apply to become an insured credit union under section 201 of such act (12 USC 1781);

(iv) any member as defined in section 2 of the Federal Home Loan Bank Act (12 USC 1422(4)); and

(v) any insured institution as defined in section 401 of the National Housing Act (12 USC 1724(a)) or any institution which is eligible to apply to become an insured institution under section 403 of such act (12 USC 1726).

(2) "Depository institution" does not include international organizations such as the World Bank, the Inter-American Development Bank, and the Asian Development Bank.

(n) "Member bank" means a depository institution that is a member of the Federal Reserve System.

(o) "Foreign bank" means any bank or other similar institution organized under the laws of any country other than the United States or organized under the laws of Puerto Rico, Guam, American Samoa, the Virgin Islands, or other territory or possession of the United States.

(p) "De novo depository institution" means a depository institution that was not engaged in business on July 1, 1979, and is not the successor by merger or consolidation to a depository institution that was engaged in business prior to the date of merger or consolidation.

(q) "Affiliate" includes any corporation, association, or other organization--

(1) of which a depository institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the numbers of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions;

(2) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of a depository institution or more than 50 percent of the number of shares voted for the election of directors of such depository institution at the preceding election, or by trustees for the benefit of the shareholders of any such depository institution;

(3) of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one depository institution; or

(4) which owns or controls, directly or indirectly, either a majority of the shares of capital stock of a depository institution or more than 50 percent of the number of shares voted for the election of directors, trustees or other persons exercising similar functions of a depository institution at the preceding election, or controls in any manner the election of a majority of the directors, trustees, or other persons exercising similar functions of a

depository institution, or for the benefit of whose shareholders or members all or substantially all the capital stock of a depository institution is held by trustees.

(r) "United States" means the states of the United States and the District of Columbia.

(s) "United States resident" means (1) any individual residing (at the time of the transaction) in the United States; (2) any corporation, partnership, association or other entity organized in the United States ("domestic corporation"); and (3) any branch or office located in the United States of any entity that is not organized in the United States.

(t) "Any deposit that is payable only at an office located outside the United States" means (1) a deposit of a United States resident 9 that is in a denomination of $100,000 or more, and as to which the depositor is entitled, under the agreement with the institution, to demand payment only outside the United States or (2) a deposit of a person who is not a United States resident 9 as to which the depositor is entitled, under the agreement with the institution, to demand payment only outside the United States.

(u) "Teller's check" means a check drawn by a depository institution on another depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, or payable at or through a depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, and which the drawing depository institution engages or is obliged to pay upon dishonor.

SECTION 204.3--Computation and Maintenance

(a) Maintenance and reporting of required reserves.

(1) Maintenance. A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or agreement corporation shall maintain reserves against its deposits and Eurocurrency liabilities in accordance with the procedures prescribed in this section and section 204.4 and the ratios prescribed in section 204.9. Reserve-deficiency charges shall be assessed for deficiencies in required reserves in accordance with the provisions of section 204.7. For purposes of this part, the obligations of a majority-owned (50 percent or more) U.S. subsidiary (except an Edge or agreement corporation) of a depository institution shall be regarded as obligations of the parent depository institution.

(2) Reporting.

(i) Every depository institution, U.S. branch or agency of a foreign bank, and Edge or agreement corporation shall file a report of deposits (or any other required form or statement) directly with the Federal Reserve Bank of its District, regardless of the manner in which it chooses to maintain required reserve balances. A foreign bank's U.S. branches and agencies and an Edge or agreement corporation's offices operating within the same state and the same Federal Reserve District shall prepare and file a report of deposits on an aggregated basis.

(ii) A Federal Reserve Bank shall notify the reporting institution of its reserve requirements. Where a pass-through arrangement exists, the Reserve Bank will also notify the pass-through correspondent of its respondent's required reserve balances.

(iii) The Board and the Federal Reserve Banks will not hold a pass-through correspondent responsible for guaranteeing the accuracy of the reports of deposits submitted by its respondents.

(3) Allocation of low reserve tranche and exemption from reserve requirements. A depository institution, a foreign bank, or an Edge or agreement corporation shall, if possible, assign the low reserve tranche and reserve-requirement exemption prescribed in section 204.9(a) to only one office or to a group of offices filing a single aggregated report of deposits. The amount of the reserve-requirement exemption allocated to an office or group of offices may not exceed the amount of the low reserve tranche allocated to such office or offices. If the low reserve tranche or reserve-requirement exemption cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the tranche or exemption may be assigned to other offices or groups of offices of the same institution until the amount of the tranche (or net transaction accounts) or exemption (or reservable liabilities) is exhausted. The tranche or exemption may be reallocated each year concurrent with implementation of the indexed tranche and exemption, or, if necessary during the course of the year to avoid underutilization of the tranche or exemption, at the beginning of a reserve-computation period.

(b) Form and location of reserves.

(1) A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or agreement corporation shall hold reserves in the form of vault cash, a balance maintained

directly with the Federal Reserve Bank in the Federal Reserve District in which it is located, or, in the case of nonmember institutions, with a pass-through correspondent in accordance with section 204.3(i).

(2)(i) For purposes of this section, a depository institution, a U.S. branch or agency of a foreign bank, or an Edge or agreement corporation is located in the Federal Reserve District that contains the location specified in the institution's charter organizing certificate, or license or, if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (b)(2)(ii) of this section.

(ii) If the location specified in paragraph (b)(2)(i) of this section, in the Board's judgment, is ambiguous, would impede the ability of the Board or the Federal Reserve Banks to perform their functions under the Federal Reserve Act, or would impede the ability of the institution to operate efficiently, the Board will determine the Federal Reserve District in which the institution is located, after consultation with the institution and the relevant Federal Reserve Banks. The relevant Federal Reserve Banks are the Federal Reserve Bank whose District contains the location specified in paragraph (b)(2)(i) of this section and the Federal Reserve Bank in whose District the institution is proposed to be located. In making this determination, the Board will consider any applicable laws, the business needs of the institution, the location of the institution's head office, the locations where the institution performs its business, and the locations that would allow the institution, the Board, and the Federal Reserve Banks to perform their functions efficiently and effectively.

(c) Computation of required reserves for institutions that report on a weekly basis.

(1) Required reserves are computed on the basis of daily average balances of deposits and Eurocurrency liabilities during a 14-day period ending every second Monday (the "computation period"). Reserve requirements are computed by applying the ratios prescribed in section 204.9 to the classes of deposits and Eurocurrency liabilities of the institution. In determining the reserve balance that is required to be maintained with the Federal Reserve, the average daily vault cash held during the computation period is deducted from the amount of the institution's required reserves.

(2) The reserve balance that is required to be maintained with the Federal Reserve shall be maintained during a 14-day period (the "maintenance period") that begins on the third Thursday following the end of a given computation period.

(d) Computation of required reserves for institutions that report on a quarterly basis. For a depository institution that is permitted to report quarterly, required reserves are computed on the basis of the depository institution's daily average deposit balances during a seven-day computation period that begins on the third Tuesday of March, June, September, and December. In determining the reserve balance that such a depository institution is required to maintain with the Federal Reserve, the daily average vault cash held during the computation period is deducted from the amount of the institution's required reserves. The reserve balance that is required to be maintained with the Federal Reserve shall be maintained during a corresponding period that begins on the fourth Thursday following the end of the institution's computation period and ends on the fourth Wednesday after the close of the institution's next computation period.

(e) Computation of transaction accounts. Overdrafts in demand deposit or other transaction accounts are not to be treated as negative demand deposits or negative transaction accounts and shall not be netted since overdrafts are properly reflected on an institution's books as assets. However, where a customer maintains multiple transaction accounts with a depository institution, overdrafts in one account pursuant to a bona fide cash-management ar rangement are permitted to be netted against balances in other related transaction accounts for reserve requirement purposes.

(f) Deductions allowed in computing reserves.

(1) In determining the reserve balance required under this part, the amount of cash items in process of collection and balances subject to immediate withdrawal due from other depository institutions located in the United States (including such amounts due from United States branches and agencies of foreign banks and Edge and agreement corporations) may be deducted from the amount of gross transaction accounts. The amount that may be deducted may not exceed the amount of gross transaction accounts.

(2) United States branches and agencies of a foreign bank may not deduct balances due from another United States branch or agency of the same foreign bank, and United States offices of an Edge or agreement corporation may not deduct balances due from another United States office of the same Edge corporation.

(3) Balances "due from other depository institutions" do not include balances due from Federal Reserve Banks, pass-through accounts, or balances (payable in dollars or otherwise) due from banking offices located outside the United States. An institution exercising fiduciary powers may not include in "balances due from other depository institutions" amounts of trust funds deposited with other banks and due to it as a trustee or other fiduciary.

(2-170) Regulation D: SECTION 204.3 -- Computation and Maintenance

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(g) Availability of cash items as reserves. Cash items forwarded to a Federal Reserve Bank for collection and credit shall not be counted as part of the reserve balance to be carried with the Federal Reserve until the expiration of the time specified in the appropriate time schedule established under Regulation J, "Collection of Checks and Other Items and Transfers of Funds" (12 CFR 210). If a depository institution draws against items before that time, the charge will be made to its reserve account if the balance is sufficient to pay it; any resulting impairment of reserve balances will be subject to the penalties provided by law and to the reserve-deficiency charges provided by this part. However, the Federal Reserve Bank may, at its discretion, refuse to permit the withdrawal or other use of credit given in a reserve account for any time for which the Federal Reserve bank has not received payment in actually and finally collected funds.

(2-171) Regulation D: SECTION 204.3 -- Computation and Maintenance

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(h) Carryover of excesses or deficiencies. Any excess or deficiency in a depository institution's account that is held directly or indirectly with a Federal Reserve Bank shall be carried over and applied to that account in the next maintenance period as specified in this paragraph. The amount of any such excess or deficiency that is carried over shall not exceed the greater of--

(1) the amount obtained by multiplying .04 times the sum of the depository institution's required reserves and the depository institution's required clearing balance, if any, and then subtracting from this product the depository institution's required charge-free band, if any; or

(2) $50,000, minus the depository institution's required charge-free band, if any. Any carryover not offset during the next period may not be carried over to subsequent periods.

(2-172) Regulation D: SECTION 204.3 -- Computation and Maintenance

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(i) Pass-through rules.

(1) Procedure.

(i) A nonmember depository institution, a U.S. branch or agency of a foreign bank, or an Edge or agreement corporation required to maintain reserve balances ("respondent") may select only one institution to pass through its required reserves, unless otherwise permitted by Federal Reserve Bank in whose District the resondent is located. Eligible institutions through which respondent required re serve balances may be passed ("correspondents") are Federal Home Loan Banks, the National Credit Union Administration Central Liquidity Facility, and depository institutions, U.S. branches or agencies of foreign banks, and Edge and agreement corporations that maintain required reserve balances at a Federal Reserve office. In addition, the Board reserves the right to permit other insti tutions, on a case-by-case basis, to serve as pass-through correspondents. The correspondent chosen must subsequently pass through the required reserve balances of its respondents directly to a Federal Reserve Bank. The correspondent placing funds with a Federal Reserve Bank on behalf of respondents will be responsible for account maintenance as described in paragraphs (i)(2) and (i)(3) of this section.

(2-173) Regulation D: SECTION 204.3 -- Computation and Maintenance

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(ii) Respondents or correspondents may institute, terminate, or change pass-through arrangements for the maintenance of required reserve balances by providing all documentation required for the establishment of the new arrangement or termination of the existing arrangement to the Federal Reserve Bank involved within the time period provided for such a change by those Reserve Banks.

(2-175) Regulation D: SECTION 204.3 -- Computation and Maintenance

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(2) Account maintenance. A correspondent that passes through required reserve balances of respondents shall maintain such balances, along with the correspondent's own required reserve balances (if any), in a single commingled account at the Federal Reserve Bank in whose District the correspondent is located, unless otherwise permitted by the Reserve Bank. The balances held by the correspondent in an account at a Reserve Bank are the property of the correspondent and represent a liability of the Reserve Bank solely to the correspondent, regardless of whether the funds represent the reserve balances of another institution that have been passed through the correspondent.

(2-178) Regulation D: SECTION 204.3 -- Computation and Maintenance

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(3) Responsibilities of parties.

(i) Each individual depository institution is responsible for maintaining its required reserve balance either directly with a Federal Reserve Bank or through a pass-through correspondent.

(ii) A pass-through correspondent shall be responsible for assuring the maintenance of the appropriate aggregate level of its respondents' required reserve balances. A Federal Reserve Bank will compare the total reserve balance required to be maintained in each account with the total actual reserve balance held in such reserve account for purposes of determining required-reserve deficiencies, imposing or waiving charges for deficiencies in required reserves, and for other reserve maintenance purposes. A charge for a deficiency in the aggregate level of the required reserve balance will be imposed by the Reserve Bank on the correspondent maintaining the account.

(iii) Each correspondent is required to maintain detailed records for each of its respondents in a manner that permits Reserve Banks to determine whether the respondent has provided a sufficient required reserve balance to the correspondent. A correspondent passing through a respondent's reserve balance shall maintain records and make such reports as the Board or Reserve Bank requires in order to ensure the correspondent's compliance with its responsibilities for the maintenance of a respondent's reserve balance. Such records shall be available to the Federal Reserve Banks as required.

(iv) The Federal Reserve Bank may terminate any pass-through relationship in which the correspondent is deficient in its recordkeeping or other responsibilities.

(v) Interest paid on supplemental reserves (if such reserves are required un der section 204.6) held by a respondent will be credited to the account maintained by the correspondent.

SECTION 204.4--Transitional Adjustments in Mergers

In cases of mergers and consolidations of depository institutions, the amount of reserves that shall be maintained by the surviving institution shall be reduced by an amount determined by multiplying the amount by which the required reserves during the computation period immediately preceding the date of the merger (computed as if the depository institutions had merged) exceeds the sum of the actual required reserves of each depository institution during the same computation period, times the appropriate percentage as specified in the following schedule:

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SECTION 204.5--Emergency Reserve Requirement

(a) Finding by Board. The Board may impose, after consulting with the appropriate committees of Congress, additional reserve requirements on depository institutions at any ratio on any liability upon a finding by at least five members of the Board that extraordinary circumstances require such action.

(b) Term. Any action taken under this section shall be valid for a period not exceeding 180 days, and may be extended for further periods of up to 180 days each by affirmative action of at least five members of the Board for each extension.

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(c) Reports to Congress. The Board shall transmit promptly to Congress a report of any exercise of its authority under this paragraph and the reasons for the exercise of authority.

(d) Reserve requirements. At present, there are no emergency reserve requirements imposed under this section.

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SECTION 204.6--Supplemental Reserve Requirement

(a) Finding by Board. Upon the affirmative vote of at least five members of the Board and after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board, the Board may impose a supplemental reserve requirement on every depository institution of not more than 4 percent of its total transaction accounts. A supplemental reserve requirement may be imposed if--

(1) the sole purpose of the requirement is to increase the amount of reserves maintained to a level essential for the conduct of monetary policy;

(2) the requirement is not imposed for the purpose of reducing the cost burdens result ing from the imposition of basic reserve requirements;

(3) such requirement is not imposed for the purpose of increasing the amount of balances needed for clearing purposes; and

(4) on the date on which supplemental reserve requirements are imposed, the total amount of basic reserve requirements is not less than the amount of reserves that would be required on transaction accounts and nonpersonal time deposits under the initial reserve ratios established by the Monetary Control Act of 1980 (Pub. L. 96-221) in effect on September 1, 1980.

(b) Term.

(1) If a supplemental reserve requirement has been imposed for a period of one year or more, the Board shall review and determine the need for continued maintenance of supplemental reserves and shall transmit annual reports to the Congress regarding the need for continuing such requirement.

(2) Any supplemental reserve requirement shall terminate at the close of the first 90-day period after the requirement is imposed during which the average amount of supplemental reserves required are less than the amount of reserves which would be required if the ratios in effect on September 1, 1980, were applied.

(c) Earnings participation account. A depository institution's supplemental reserve require ment shall be maintained by the Federal Reserve Banks in an earnings participation account. Such balances shall receive earnings to be paid by the Federal Reserve Banks during each calendar quarter at a rate not to exceed the rate earned on the securities portfolio of the Federal Reserve System during the previous calendar quarter. Additional rules and regulations may be prescribed by the Board concerning the payment of earnings on earnings participation accounts by Federal Reserve Banks.

(d) Report to Congress. The Board shall transmit promptly to the Congress a report stating the basis for exercising its authority to require a supplemental reserve under this section.

(e) Reserve requirements. At present, there are no supplemental reserve requirements imposed under this section.

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SECTION 204.7--Penalties

(a) Charges for deficiencies.

(1) Assessment of charges. Deficiencies in a depository institution's required reserve balance, after application of the carryover provided in section 204.3(h) are subject to reserve-deficiency charges. Federal Reserve Banks are authorized to assess charges for deficiencies in required reserves at a rate of 2 percent per year above the lowest rate in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred. Charges shall be assessed on the basis of daily average deficiencies during each maintenance period. Reserve Banks may, as an alternative to levying monetary charges, after consideration of the circumstances involved, permit a depository institution to eliminate deficiencies in its required reserve balance by maintaining additional reserves during subsequent reserve maintenance periods.

(2) Waivers.

(i) Reserve Banks may waive the charges for reserve deficiencies except when the deficiency arises out of a depository institution's gross negligence or conduct that is inconsistent with the principles and purposes of reserve requirements. Each Reserve Bank has adopted guidelines that provide for waivers of small charges. The guidelines also provide for waiving the charge once during a two-year period for any deficiency that does not exceed a certain percentage of the depository institution's required reserves. Decisions by Reserve Banks to waive charges in other situations are based on an evaluation of the circumstances in each individual case and the depository institution's reserve maintenance record. If a depository institution has demonstrated a lack of due regard for the proper maintenance of required reserves, the Reserve Bank may decline to exercise the waiver privilege and assess all charges regardless of amount or reason for the deficiency.

(ii) In individual cases, where a federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Reserve Bank in the District where the involved depository institution is located shall waive the reserve requirement imposed under this part for such depository institution when requested by the federal supervisory authority involved.

(b) Penalties for violations. Violations of this part may be subject to assessment of civil money penalties by the Board under authority of section 19(1) of the Federal Reserve Act (12 USC 505) as implemented in 12 CFR 263. In addition, the Board and any other federal financial institution supervisory authority may enforce this part with respect to depository institutions subject to their jurisdiction under authority conferred by law to undertake cease-and-desist proceedings.

2-206.1

SECTION 204.8--International Banking Facilities

(a) Definitions. For purposes of this part, the following definitions apply:

(1) "International banking facility" or "IBF" means a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or agreement corporation that includes only international banking facility time deposits and international banking facility extensions of credit.

(2) "International banking facility time deposit" or "IBF time deposit" means a deposit, placement, borrowing or similar obligation represented by a promissory note, acknowledgment of advance, or similar instrument that is not issued in negotiable or bearer form, and

(i)(A) that must remain on deposit at the IBF at least overnight; and

(B) that is issued to--

(1) any office located outside the United States of another depository institution organized under the laws of the United States or of an Edge or agreement corporation;

(2) any office located outside the United States of a foreign bank;

(3) a United States office or a non-United States office of the entity establishing the IBF;

(4) another IBF; or

(5) a foreign national government, or an agency or instrumentality thereof, 10 engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board; 11 or

(ii)(A) that is payable--

(1) on a specified date not less than two business days after the date of deposit;

(2) upon expiration of a specified period of time not less than two business days after the date of deposit; or

(3) upon written notice that actually is required to be given by the depositor not less than two business days prior to the date of withdrawal;

(B) that represents funds deposited to the credit of a non-United States resident or a foreign branch, office, subsidiary, affiliate, or other foreign establishment ("foreign affiliate") con trolled by one or more domestic corporations provided that such funds are used only to support the operations outside the United States of the depositor or of its affiliates located outside the United States; and

(C) that is maintained under an agreement or arrangement under which no deposit or withdrawal of less than $100,000 is permitted, except that a withdrawal of less than $100,000 is permitted if such withdrawal closes an account.

(2-206.11) Regulation D: SECTION 204.8 -- International Banking Facilities

2-206.11

(3) "International banking facility extension of credit" or "IBF loan" means any transaction where an IBF supplies funds by making a loan, or placing funds in a deposit account. Such transactions may be represented by a promissory note, security, acknowledgment of advance, due bill, repurchase agreement, or any other form of credit transaction. Such credit may be extended only to--

(i) any office located outside the United States of another depository institution organized under the laws of the United States or of an Edge or agreement corporation;

(ii) any office located outside the United States of a foreign bank;

(iii) a United States or a non-United States office of the institution establishing the IBF;

(iv) another IBF;

(v) a foreign national government, or an agency or instrumentality thereof, 12 engaged principally in activities which are ordinarily performed in the United States by governmental entities; an international entity of which the United States is a member; or any other foreign international or supranational entity specifically designated by the Board, 13 or

(vi) a non-United States resident or a foreign branch, office, subsidiary, affiliate or other foreign establishment ("foreign affiliate") controlled by one or more domestic corporations provided that the funds are used only to finance the operations outside the United States of the borrower or of its affiliates located outside the United States.

(2-206.12) Regulation D: SECTION 204.8 -- International Banking Facilities

2-206.12

(b) Acknowledgment of use of IBF deposits and extensions of credit. An IBF shall provide written notice to each of its customers (otherthan those specified in section 204.8(a)(2) (i)(B) and section 204.8(a)(3)(i) through (v)) at the time a deposit relationship or a credit relationship is first established that it is the policy of the Board of Governors of the Federal Reserve System that deposits received by international banking facilities may be used only to support the depositor's operations outside the United States as specified in section 204.8(a)(2)(ii)(B) and that extensions of credit by IBFs may be used only to finance operations outside of the United States as specified in section 204.8(a)(3)(vi). In the case of loans to or deposits from foreign affiliates of U.S. residents, receipt of such notice must be acknowledged in writing whenever a deposit or credit relationship is first established with the IBF.

(c) Exemption from reserve requirements. An institution that is subject to the reserve requirements of this part is not required to maintain reserves against its IBF time deposits or IBF loans. Deposit-taking activities of IBFs are limited to accepting only IBF time deposits and lending activities of IBFs are restricted to making only IBF loans.

(2-206.13) Regulation D: SECTION 204.8 -- International Banking Facilities

2-206.13

(d) Establishment of an international banking facility. A depository institution, an Edge or agreement corporation or a United States branch or agency of a foreign bank may establish an IBF in any location where it is legally authorized to engage in IBF business. However, only one IBF may be established for each reporting entity that is required to submit a Report of Transaction Accounts, Other Deposits and Vault Cash (Form FR 2900).

(e) Notification to Federal Reserve. At least 14 days prior to the first reserve computation period that an institution intends to establish an IBF it shall notify the Federal Reserve Bank of the District in which it is located of its intent. Such notification shall include a statement of intention by the institution that it will comply with the rules of this part con cerning IBFs, including restrictions on sources and uses of funds, and recordkeeping and accounting requirements. Failure to comply with the requirements of this part shall subject the institution to reserve requirements under this part or result in the revocation of the institution's ability to operate an IBF.

(f) Recordkeeping requirements. A depository institution shall segregate on its books and records the asset and liability accounts of its IBF and submit reports concerning the operations of its IBF as required by the Board.

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SECTION 204.9--Supplement: Reserve Requirement Ratios

(a) Reserve percentages. The following reserve ratios are prescribed for all depository institutions, Edge and agreement corporations, and United States branches and agencies of foreign banks:

(b) Exemption from reserve requirements. Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a) of this section not in excess of $4.7 million determined in accordance with section 204.3(a)(3).

Statutory Authority for Regulation D

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FEDERAL RESERVE ACT

SECTION 19--Bank Reserves

(2-209) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

(a) The Board is authorized for the purposes of this section to define the terms used in this section, to determine what shall be deemed a payment of interest, to determine what types of obligations, whether issued directly by a member bank or indirectly by an affiliate of a member bank or by other means, shall be deemed a deposit, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this section and to prevent evasions thereof.

(2-210) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

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(b) Reserve requirements.

(1) Definitions. The following definitions and rules apply to this subsection, subsection (c), section 11A, the first paragraph of section 13, and the second, thirteenth, and fourteenth paragraphs of section 16:

(A) The term "depository institution" means--

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application to become an insured bank under section 5 of such Act;

(iv) any insured credit union as defined in section 101 of the Federal Credit Union Act or any credit union which is eligible to make application to become an insured credit union pursuant to section 201 of such Act;

(v) any member as defined in section 2 of the Federal Home Loan Bank Act;

(vi) any savings association (as defined in section 3 of the Federal Deposit Insurance Act) which is an insured depository institution (as defined in such Act) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act; and

(vii) for the purpose of section 13 and the fourteenth paragraph of section 16, any association or entity which is wholly owned by or which consists only of institutions referred to in clauses (i) through (vi).

(B) The term "bank" means any insured or noninsured bank, as defined in section 3 of the Federal Deposit Insurance Act, other than a mutual savings bank or a savings bank as defined in such section.

(C) The term "transaction account" means a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such term includes demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

(D) The term "nonpersonal time deposits" means a transferable time deposit or account or a time deposit or account representing funds deposited to the credit of, or in which any beneficial interest is held by, a depositor who is not a natural person.

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(E) The term "reservable liabilities" means transaction accounts, nonpersonal time deposits, and all net balances, loans, assets, and obligations which are, or may be, subject to reserve requirements under paragraph (5).

(F) In order to prevent evasions of the reserve requirements imposed by this subsection, after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, the Board of Governors of the Federal Reserve System is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirect ly for the purpose of making payments or transfers to third persons or others.

(2-213) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-213

(2) Reserve requirements.

(A) Each depository institution shall maintain reserves against its transaction accounts as the Board may prescribe by regulation solely for the purpose of implementing monetary policy--

(i) in the ratio of 3 per centum for that portion of its total transaction accounts of $25,000,000 or less, subject to subparagraph (C); and

(ii) in the ratio of 12 per centum, or in such other ratio as the Board may prescribe not greater than 14 per centum and not less than 8 per centum, for that portion of its total transaction accounts in excess of $25,000,000, subject to subparagraph (C).

(2-214) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-214

(B) Each depository institution shall maintain reserves against its nonpersonal time deposits in the ratio of 3 per centum, or in such other ratio not greater than 9 per centum and not less than zero per centum as the Board may prescribe by regulation solely for the purpose of implementing monetary policy.

(2-215) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

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(C) Beginning in 1981, not later than December 31 of each year the Board shall issue a regulation increasing for the next succeeding calendar year the dollar amount which is contained in subparagraph (A) or which was last determined pursuant to this subparagraph for the purpose of such subparagraph, by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage increase in the total transaction accounts of all depository institutions. The increase in such transaction accounts shall be determined by subtracting the amount of such accounts on June 30 of the preceding calendar year from the amount of such accounts on June 30 of the calendar year involved. In the case of any such 12-month period in which there has been a decrease in the total transaction accounts of all depository institutions, the Board shall issue such a regulation decreasing for the next succeeding calendar year such dollar amount by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage decrease in the total transaction accounts of all depository institutions. The decrease in such transaction accounts shall be determined by subtracting the amount of such accounts on June 30 of the calendar year involved from the amount of such accounts on June 30 of the previous calendar year.

(D) Any reserve requirement imposed under this subsection shall be uniformly applied to all transaction accounts at all depository institutions. Reserve requirements imposed under this subsection shall be uniformly applied to nonpersonal time deposits at all depository institutions, except that such requirements may vary by the maturity of such deposits.

(3) Waiver of ratio limits in extraordinary circumstances. Upon a finding by at least 5 members of the Board that extraordinary circumstances require such action, the Board, after consultation with the appropriate committees of the Congress, may impose, with respect to any liability of depository institutions, reserve requirements outside the limitations as to ratios and as to types of liabilities otherwise prescribed by paragraph (2) for a period not exceeding 180 days, and for further periods not exceeding 180 days each by affirmative action by at least 5 members of the Board in each instance. The Board shall promptly transmit to the Congress a report of any exercise of its authority under this paragraph and the reasons for such exercise of authority.

(4) Supplemental reserves.

(A) The Board may, upon the affirmative vote of not less than 5 members, impose a supplemental reserve requirement on every depository institution of not more than 4 per centum of its total transaction accounts. Such supplemental reserve requirement may be imposed only if--

(i) the sole purpose of such requirement is to increase the amount of reserves maintained to a level essential for the conduct of monetary policy;

(ii) such requirement is not imposed for the purpose of reducing the cost burdens resulting from the imposition of the reserve requirements pursuant to paragraph (2);

(iii) such requirement is not imposed for the purpose of increasing the amount of balances needed for clearing purposes; and

(iv) on the date on which the supplemental reserve requirement is imposed, except as provided in paragraph (11), the total amount of reserves required pursuant to paragraph (2) is not less than the amount of reserves that would be required if the initial ratios specified in paragraph (2) were in effect.

(2-219) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-219

(B) The Board may require the supplemental reserve authorized under subparagraph (A) only after consultation with the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board. The Board shall promptly transmit to the Congress a report with respect to any exercise of its authority to require supplemental reserves under subparagraph (A) and such report shall state the basis for the determination to exercise such authority.

(2-220) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-220

(C) The supplemental reserve authorized under subparagraph (A) shall be maintained by the Federal Reserve banks in an Earnings Participation Account. Except as provided in subsection (c)(1)(A)(ii), such Earnings Participation Account shall receive earnings to be paid by the Federal Reserve banks during each calendar quarter at a rate not more than the rate earned on the securities portfolio of the Federal Reserve System during the previous calendar quarter. The Board may prescribe rules and regulations concerning the payment of earnings on Earnings Participation Accounts by Federal Reserve banks under this paragraph.

(2-221) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-221

(D) If a supplemental reserve under subparagraph (A) has been required of depository institutions for a period of one year or more, the Board shall review and determine the need for continued maintenance of supplemental reserves and shall transmit annual reports to the Congress regarding the need, if any, for continuing the supplemental reserve.

(2-222) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-222

(E) Any supplemental reserve imposed under subparagraph (A) shall terminate at the close of the first 90-day period after such requirement is imposed during which the average amount of reserves required under paragraph (2) are less than the amount of reserves which would be required during such period if the initial ratios specified in paragraph (2) were in effect.

(2-223) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-223

(5) Reserves related to foreign obligations or assets. Foreign branches, subsidiaries, and international banking facilities of nonmember depository institutions shall maintain reserves to the same extent required by the Board of foreign branches, subsidiaries, and international banking facilities of member banks. In addition to any reserves otherwise required to be maintained pursuant to this subsection, any depository institution shall maintain reserves in such ratios as the Board may prescribe against--

(A) net balances owed by domestic of fices of such depository institution in the United States to its directly related foreign offices and to foreign offices of nonrelated depository institutions;

(B) loans to United States residents made by overseas offices of such depository institution if such depository institution has one or more offices in the United States; and

(C) assets (including participations) held by foreign offices of a depository institution in the United States which were acquired from its domestic offices.

(2-224) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-224

(6) Exemption for certain deposits. The requirements imposed under paragraph (2) shall not apply to deposits payable only outside the States of the United States and the District of Columbia, except that nothing in this subsection limits the authority of the Board to

impose conditions and requirements on member banks under section 25 of this Act or the authority of the Board under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105).

(7) Discount and borrowing. Any depository institution in which transaction accounts or nonpersonal time deposits are held shall be entitled to the same discount and borrowing privileges as member banks. In the administration of discount and borrowing privileges, the Board and the Federal Reserve banks shall take into consideration the special needs of savings and other depository institutions for access to discount and borrowing facilities consistent with their long-term asset portfolios and the sensitivity of such institutions to trends in the national money markets.

(8) Transitional adjustments.

(A) Any depository institution required to maintain reserves under this subsection which was engaged in business on July 1, 1979, but was not a member of the Federal Reserve System on or after that date, shall maintain reserves against its deposits during the first twelve-month period following the effective date of this paragraph in amounts equal to one-eighth of those otherwise required by this subsection, during the second such twelve-month period in amounts equal to one-fourth of those otherwise required, during the third such twelve-month period in amounts equal to three-eighths of those otherwise required, during the fourth twelve-month period in amounts equal to one-half of those otherwise required, and during the fifth twelve-month period in amounts equal to five-eighths of those otherwise required, during the sixth twelve-month period in amounts equal to three-fourths of those otherwise required, and during the seventh twelve-month period in amounts equal to seven-eighths of those otherwise required. This subparagraph does not apply to any category of deposits or accounts which are first authorized pursuant to Federal law in any State after April 1, 1980.

(B) With respect to any bank which was a member of the Federal Reserve System during the entire period beginning on July 1, 1979, and ending on the effective date of the Monetary Control Act of 1980, the amount of required reserves imposed pursuant to this subsection on and after the effective date of such Act that exceeds the amount of reserves which would have been required of such bank if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied may, at the discretion of the Board and in accordance with such rules and regulations as it may adopt, be reduced by 75 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 25 per centum during the third year.

(2-228) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-228

(C)(i) With respect to any bank which is a member of the Federal Reserve System on the effective date of the Monetary Control Act of 1980, the amount of reserves which would have been required of such bank if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied that exceeds the amount of required reserves imposed pursuant to this subsection shall, in accordance with such rules and regulations as the Board may adopt, be reduced by 25 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 75 per centum during the third year.

(2-229) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-229

(ii) If a bank becomes a member bank during the four-year period beginning on the effective date of the Monetary Control Act of 1980, and if the amount of reserves which would have been required of such bank, determined as if the reserve ratios in effect during the reserve computation period immediately preceding such effective date were applied, and as if such bank had been a member during such period, exceeds the amount of reserves required pursuant to this subsection, the amount of reserves required to be maintained by such bank beginning on the date on which such bank becomes a member of the Federal Reserve System shall be the amount of reserves which would have been required of such bank if it had been a member on the day before such effective date, except that the amount of such excess shall, in accordance with such rules and regulations as the Board may adopt, be reduced by 25 per centum during the first year which begins after such effective date, 50 per centum during the second year, and 75 per centum during the third year.

(2-230) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-230

(D)(i) Any bank which was a member bank on July 1, 1979, and which withdraws from membership in the Federal Reserve System during the period beginning on July 1, 1979, and ending on March 31, 1980, shall maintain reserves during the first twelve-month period beginning on the date of enactment of this clause in amounts equal to one-half of those otherwise required by this subsection, during the second such twelve-month period in amounts equal to two-thirds of those otherwise required, and during the third such twelve-month period in amounts equal to five-sixths of those otherwise required.

(ii) Any bank which withdraws from membership in the Federal Reserve System on or after the date of enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall maintain reserves in the same amount as member banks are required to maintain under this subsection, pursuant to subparagraphs (B) and (C)(i).

(E) This subparagraph applies to any depository institution that, on August 1, 1978, (i) was engaged in business as a depository institution in a State outside the continental limits of the United States, and (ii) was not a member of the Federal Reserve System at any time on or after such date. Such a depository institution shall not be required to maintain reserves against its deposits held or maintained at its offices located in a State outside the continental limits of the United States until the first day of the sixth calendar year which begins after the effective date of the Monetary Control Act of 1980. Such a depository institution shall maintain reserves against its deposits during the sixth calendar year which begins after such effective date in an amount equal to one-eighth of that otherwise required by paragraph (2), during the seventh such year in an amount equal to one-fourth of that otherwise required, during the eighth such year in an amount equal to three-eighths of that otherwise required, during the ninth such year in an amount equal to one-half of that otherwise required, during the tenth such year in an amount equal to five-eighths of that otherwise required, during the eleventh such year in an amount equal to three-fourths of that otherwise required, and during the twelfth such year in an amount equal to seven-eighths of that otherwise required.

(9) Exemption. This subsection shall not apply with respect to any financial institution which--

(A) is organized solely to do business with other financial institutions;

(B) is owned primarily by the financial institutions with which it does business; and

(C) does not do business with the general public.

(2-234) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-234

(10) Waivers. In individual cases, where a Federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Board shall waive the reserve requirement, or waive the penalty for failing to satisfy a reserve requirement, imposed pursuant to this subsection for the depository institution involved when requested by the Federal supervisory authority involved.

(2-234.1) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-234.1

(11) Additional exemptions.

(A)(i) Notwithstanding the reserve requirement ratios established under paragraphs (2) and (5) of this subsection, a reserve ratio of zero per centum shall apply to any combination of reservable liabilities, which do not exceed $2,000,000 (as adjusted under subparagraph (B)), of each depository institution.

(ii) Each depository institution may designate, in accordance with such rules and regulations as the Board shall prescribe, the types and amounts of reservable liabilities to which the reserve ratio of zero per centum shall apply, except that transaction accounts which are designated to be subject to a reserve ratio of zero per centum shall be accounts which would otherwise be subject to a reserve ratio of 3 per centum under paragraph (2).

(iii) The Board shall minimize the reporting necessary to determine whether depository institutions have total reservable liabilities of less than $2,000,000 (as adjusted under subparagraph (B)). Consistent with the Board's responsibility to monitor and control monetary and credit aggregates, depository institutions which have reserve requirements under this subsection equal to zero per centum shall be subject to less overall reporting requirements than depository institutions which have a reserve requirement under this subsection that exceeds zero per centum.

(B)(i) Beginning in 1982, not later than December 31 of each year, the Board shall issue a regulation increasing for the next succeeding calendar year the dollar amount specified in subparagraph (A), as previously adjusted under this subparagraph, by an amount obtained by multiplying such dollar amount by 80 per centum of the percentage increase in the total reservable liabilities of all depository institutions.

(ii) The increase in total reservable liabilities shall be determined by subtracting the amount of total reservable liabilities on June 30 of the preceding calendar year from the amount of total reservable liabilities on June 30 of the calendar year involved. In the case of any such twelve-month period in which there has been a decrease in the total reservable liabilities of all depository institutions, no adjustment shall be made. A decrease in total reservable liabilities shall be determined by subtracting the amount of total reservable liabilities on June 30 of the calendar year involved from the amount of total reservable liabilities on June 30 of the previous calendar year.

(c)(1) Reserves held by a depository institution to meet the requirements imposed pursuant to subsection (b) shall, subject to such rules and regulations as the Board shall prescribe, be in the form of--

(A) balances maintained for such purposes by such depository institution in the Federal Reserve bank of which it is a member or at which it maintains an account, except that (i) the Board may, by regulation or order, permit depository institutions to maintain all or a portion of their required reserves in the form of vault cash, except that any portion so permitted shall be identical for all depository institutions, and (ii) vault cash may be used to satisfy any supplemental reserve requirement imposed pursuant to subsection (b)(4), except that all such vault cash shall be excluded from any computation of earnings pursuant to subsection (b)(4)(C); and

(B) balances maintained by a depository institution which is not a member bank in a depository institution which maintains required reserve balances at a Federal Reserve bank, in a Federal Home Loan Bank, or in the National Credit Union Administration Central Liquidity Facility, if such depository institution, Federal Home Loan Bank, or National Credit Union Administration Central Liquidity Facility maintains such funds in the form of balances in a Federal Reserve bank of which it is a member or at which it maintains an account. Balances received by a depository institution from a second depository institution and used to satisfy the reserve requirement imposed on such second depository institution by this section shall not be subject to the reserve requirements of this section imposed on such first depository institution, and shall not be subject to assessments or reserves imposed on such first depository institution pursuant to section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817), section 404 of the National Housing Act (12 U.S.C. 1727), or section 202 of the Federal Credit Union Act (12 U.S.C. 1782).

(2) The balances maintained to meet the reserve requirements of subsection (b) by a depository institution in a Federal Reserve bank or passed through a Federal Home Loan

Bank or the National Credit Union Administration Central Liquidity Facility or another depository institution to a Federal Reserve bank may be used to satisfy liquidity requirements which may be imposed under other provisions of Federal or State law.

[12 USC 461(a)-(c). As amended by acts of June 21, 1917 (40 Stat. 239); Aug. 23, 1935 (49 Stat. 714); Sept. 21, 1966 (80 Stat. 823); Dec. 23, 1969 (83 Stat. 374, 375); Oct. 29, 1974 (88 Stat. 1557); March 31, 1980 (94 Stat. 133, 138); Aug. 13, 1981 (95 Stat. 433); Oct. 15, 1982 (96 Stat. 1520, 1521, 1522, 1523, 1540); and Aug. 9, 1989 (103 Stat. 439).]

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(2-238) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-238

(f) The required balance carried by a member bank with a Federal Reserve bank may, under the regulations and subject to such penalties as may be prescribed by the Board of Governors of the Federal Reserve System, be checked against and withdrawn by such member bank for the purpose of meeting existing liabilities.

[12 USC 464. As amended by acts of Aug. 15, 1914 (38 Stat. 691); June 21, 1917 (40 Stat. 239); Aug. 23, 1935 (49 Stat. 704); and July 7, 1942 (56 Stat. 648).]

(g) In estimating the reserve balances required by this Act, member banks may deduct from the amount of their gross demand deposits the amounts of balances due from other banks (except Federal Reserve banks and foreign banks) and cash items in process of collection payable immediately upon presentation in the United States, within the meaning of these terms as defined by the Board of Governors of the Federal Reserve System.

[12 USC 465. As amended by acts of Aug. 15, 1914 (38 Stat. 691); June 12, 1917 (40 Stat. 239); and Aug. 23, 1935 (49 Stat. 714).]

(2-238.1) Regulation D (Statutory Provisions): SECTION 19 -- Bank Reserves

2-238.1

Bank in Dependencies and Insular Possessions as Member Banks; Reserves

(h) National banks, or banks organized under local laws, located in the dependency or insular possession or any part of the United States outside the continental United States may remain nonmember banks, and shall in that event maintain reserves and comply with all the conditions now provided by law regulating them; or said banks may, with the consent of the Board of Governors of the Federal Reserve System, become member banks of any one of the reserve districts, and shall in that event take stock, maintain reserves, and be subject to all the other provisions of this Act.

[12 USC 466. As reenacted without change by act of Aug. 15, 1914 (38 Stat. 692); and as amended by acts of June 21, 1917 (40 Stat. 240); June 25, 1959 (73 Stat. 142) and Sept. 21, 1966 (80 Stat. 824) (as amended by acts of Sept. 21, 1967 (81 Stat. 226) and Sept. 21, 1968 (82 Stat. 856)). The "continental United States" is defined in the third paragraph of section 1 of the Federal Reserve Act to mean the "States of the United States and the District of Columbia."]

SECTION 11--Powers of the Board of Governors of the Federal Reserve System

(2-239) Regulation D (Statutory Provisions): SECTION 11 -- Powers of the Board of Governors of the Federal Reserve System

2-239

SECTION 11--Powers of the Board of Governors of the Federal Reserve System

The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a)(1) To examine at its discretion the accounts, books, and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single and combined, and shall furnish full information regarding the character of the money held as reserve and the amount, nature, and maturities of the paper and other investments owned or held by Federal reserve banks.

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under section 19 of this Act exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State nonmember banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) Federal Home Loan Bank Board in the case of any institution insured by the Federal Savings and Loan Insurance Corporation or which is a member as defined in section 2 of the Federal Home Loan Bank Act, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings and loan association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements

shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

* * * * *

(c) To suspend for a period not exceeding thirty days, and from time to time to renew such suspensions for periods not exceeding fifteen days, any reserve requirements specified in this Act.

* * * * *

(e) To add to the number of cities classified as reserve cities under existing law in which national banking associations are subject to the reserve requirements set forth in section [nineteen] of this Act; or to reclassify existing reserve cities or to terminate their designation as such.

[12 USC 248 (a), (c), and (e). As amended by acts of June 12, 1945 (59 Stat. 237); July 28, 1959 (73 Stat. 264); March 18, 1968 (82 Stat. 50) and March 31, 1980 (94 Stat. 132).]

SECTION 25--Foreign Branches

(2-240) Regulation D (Statutory Provisions): SECTION 25 -- Foreign Branches

2-240

SECTION 25--Foreign Branches

Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Board of Governors of the Federal Reserve System for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, the following powers:

First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

* * * * *

[12 USC 601. As amended by act of Sept. 7, 1916 (39 Stat. 755), which completely revised this section, and July 1, 1966 (80 Stat. 241).]

SECTION 25A --Banking Corporations Authorized to Do Foreign Banking Business

(2-241) Regulation D (Statutory Provisions): SECTION 25A -- Banking Corporations Authorized to Do Foreign Banking Business

2-241

SECTION 25A *--Banking Corporations Authorized to Do Foreign Banking Business

* * * * *

Each corporation so organized shall have power, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe:

(a) To purchase, sell, discount, and negotiate, with or without its indorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell with or without its indorsement or guaranty, securities, including the obligations of the United States or of any State thereof but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions as the Board of Governors of the Federal Reserve System may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the Board of Governors of the Federal Reserve System may prescribe; to receive deposits outside of the United States and to receive only such deposits within the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States; and generally to exercise such powers as are incidental to the powers conferred by this Act or as may be usual, in the determination of the Board of Governors of the Federal Reserve System, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the powers specifically granted herein. Nothing contained in this section shall be construed to prohibit the Board of Governors of the Federal Reserve System, under its power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by the corporation and outstanding at any one time. Whenever a corporation organized under this section receives deposits in the United States authorized by this section it shall carry reserves in such amounts as the Board of Governors of the Federal Reserve System may prescribe for member banks of the Federal Reserve System.

* * * * *

[12 USC 615. As added by act of Dec. 24, 1919 (41 Stat. 378) and amended by acts of Aug. 23, 1935 (49 Stat. 704) and Sept. 17, 1978 (92 Stat. 609).]

INTERNATIONAL BANKING ACT OF 1978

(2-242) Regulation D (Statutory Provisions): INTERNATIONAL BANKING ACT OF 1978

2-242

INTERNATIONAL BANKING ACT OF 1978

SECTION 7--Authority of Federal Reserve System

(2-242) Regulation D (Statutory Provisions): SECTION 7 -- Authority of Federal Reserve System

(a)(1)(A) Except as provided in paragraph (2) of this subsection, subsections (a), (b), (c), (d), (f), (g), (i), (j), (k), and the second sentence of subsection (e) of section 19 of the Federal Reserve Act shall apply to every Federal branch and Federal agency of a foreign bank in the same manner and to the same extent as if the Federal branch or Federal agency were a member bank as that term is defined in section 1 of the Federal Reserve Act; but the Board either by general or specific regulation or ruling may waive the minimum and maximum reserve ratios prescribed under section 19 of the Federal Reserve Act and may prescribe any ratio, not more than 22 per centum, for any obligation of any such Federal branch or Federal agency that the Board may deem reasonable and appropriate, taking into consideration the character of business conducted by such institutions and the need to maintain vigorous and fair competition between and among such institutions and member banks. The Board may impose reserve requirements on Federal branches and Federal agencies in such graduated manner as it deems reasonable and appropriate.

(B) After consultation and in cooperation with the State bank supervisory authorities, the Board may make applicable to any State branch or State agency any requirement made applicable to, or which the Board has authority to impose upon, any Federal branch or agency under subparagraph (A) of this paragraph.

(2-243) Regulation D (Statutory Provisions): SECTION 7 -- Authority of Federal Reserve System

2-243

(2) A branch or agency shall be subject to this subsection only if (A) its parent foreign bank has total worldwide consolidated bank assets in excess of $1,000,000,000; (B) its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000; or (C) its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of $1,000,000,000.

* * * * *

[12 USC 3105.]

Board Interpretations of Regulation D

"BANKERS' BANK"

(2-259) Regulation D (Board Interpretations): "BANKERS' BANK"

2-259

"BANKERS' BANK"

The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (title I of Pub. L. 96-221), imposes federal reserve requirements on depository institutions that maintain transaction accounts or nonpersonal time deposits. Under section 19(b)(9), however, a depository institution is not required to maintain reserves if it--

• is organized solely to do business with other financial institutions;

• is owned primarily by the financial institutions with which it does business; and

• does not do business with the general public.

Depository institutions that satisfy all of these requirements are regarded as "bankers' banks."

In its application of these requirements to specific institutions, the Board will use the following standards:

A depository institution may be regarded as organized solely to do business with other depository institutions even if, as an incidental part to its activities, it does business to a limited extent with entities other than depository institutions. The extent to which the institution may do business with other entities and continue to be regarded as a bankers' bank is specified in (C) below.

A depository institution will be regarded as being owned primarily by the institutions with which it does business if 75 percent or more of its capital is owned by other depository institutions. The 75 percent or more ownership rule applies regardless of the type of depository institution.

A depository institution will not be regarded as doing business with the general public if it meets two conditions. First, the range of customers with which the institution does business must be limited to depository institutions, including subsidiaries or organizations owned by depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are acquired at the request of the institution's supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; and depository institution trade associations. Second, the extent to which the depository institution makes loans to, or investments in, the above entities (other than depository institutions) cannot exceed 10 percent of total assets, and the extent to which it receives deposits (or shares if the institution does not receive deposits) from or issues other liabilities to the above entities (other than depository institutions) cannot exceed 10 percent of total liabilities (or net worth if the institution does not receive deposits).

If a depository institution is unable to meet all of these requirements on a continuing basis, it will not be regarded as a bankers' bank and will be required to satisfy federal reserve requirements on all of its transaction accounts and nonpersonal time deposits.

Section 19(c)(1) of the Federal Reserve Act, as amended by the Monetary Control Act of 1980 (title I of Pub. L. 96-221) provides that federal reserve requirements may be satisfied by the maintenance of vault cash or balances in a Federal Reserve Bank. Depository institutions that are not members of the Federal Reserve System may also satisfy reserve requirements by maintaining a balance in another depository institution that maintains required reserve balances at a Federal Reserve Bank, in a Federal Home Loan Bank, or in the National Credit Union Administration Central Liquidity Facility if the balances maintained by such institutions are subsequently passed through to the Federal Reserve Bank.

On August 27, 1980, the Board announced the procedures that will apply to such pass-through arrangements (45 Fed. Reg. 58,099). Section 204.3(i)(1) provides that the Board may permit, on a case-by-case basis, depository institutions that are not themselves required to maintain reserves ("bankers' banks") to act as pass-through correspondents if certain criteria are satisfied. The Board has determined that a bankers' bank may act as a pass-through correspondent if it enters into an agreement with the Federal Reserve to accept responsibility for the maintenance of pass-through reserve accounts in accordance with Regulation D (12 CFR 204.3(i)) and if the Federal Reserve is satisfied that the quality of management and financial resources of the institution are adequate in order to enable the institution to serve as a pass-through correspondent in accordance with Regulation D. Satisfaction of these criteria will assure that pass-through arrangements are maintained properly without additional financial risk to the Federal Reserve.

In order to determine uniformly the adequacy of managerial and financial resources, the Board will consult with the federal supervisor for the type of institution under consideration. Because the Board does not possess direct experience with supervising depository institutions other than commercial banks, and does not intend to involve itself in the direct supervision of such institutions, it will request the National Credit Union

Administration to review requests from credit unions that qualify as bankers' banks and the Federal Home Loan Bank Board to review requests from savings and loan associations that qualify as bankers' banks, regardless of charter or insurance status. (The Board, itself, will consider requests from all commercial banks that qualify as bankers' banks.) If the federal supervisor does not find the institution's managerial or financial resources to be adequate, the Board will not permit the institution to act as a pass-through correspondent. In order to assure the continued adequacy of managerial and financial resources, it is anticipated that the appropriate federal supervisor will, on a periodic basis, review and evaluate the managerial and financial resources of the institution in order to determine whether it should continue to be permitted to act as a pass-through correspondent. It is anticipated that, with respect to state-chartered institutions, the federal supervisor may discuss the request with the institution's state supervisor. The Board believes that this procedure will promote uniformity of treatment for all types of bankers' banks, and provide consistent advice concerning managerial ability and financial strength from supervisory authorities that are in a better position to evaluate these criteria for depository institutions that are not commercial banks.

Requests for a determination as to whether a depository institution will be regarded as a bankers' bank for purposes of the Federal Reserve Act or for permission to act as a pass-through correspondent may be addressed to the Federal Reserve Bank in whose District the main office of the depository institution is located or to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The Board will act promptly on all requests received directly or through Federal Reserve Banks. 1980 Fed. Res. Bull. 901; 12 CFR 204.121.

COMPUTATION OF RESERVES--Pursuant to Monetary Control Act of 1980

(2-260) Regulation D (Board Interpretations): COMPUTATION OF RESERVES --Pursuant to Monetary Control Act of 1980

2-260

COMPUTATION OF RESERVES--Pursuant to Monetary Control Act of 1980

The Monetary Control Act of 1980 (title I of Pub. L. 96-221) ("act") provides that any bank that was a member bank on July 1, 1979, and which withdraws from membership in the Federal Reserve System during the period beginning on July 1, 1979, and ending on March 30, 1980, is required to maintain reserves in an amount equal to the amount of reserves it would have been required to maintain if it had been a member bank on March 31, 1980. The act further provides that any bank that withdraws from membership in the Federal Reserve System on or after March 31, 1980, shall maintain reserves in the same amount as member banks. The Board of Governors has established certain policies and procedures to implement these provisions.

1. Determination of date of withdrawal from membership. Any bank that was a member bank, but which withdrew from membership in the Federal Reserve System prior to July

1, 1979, as determined below, will be subject to federal reserve requirements on September 1, 1980, the effective date of the remaining provisions of the Monetary Control Act. Such banks will be entitled to an eight-year phase-in of reserve requirements. A bank that is determined to have withdrawn from membership on July 1, 1979, or thereafter, is subject to federal reserve requirements pursuant to Regulation D in the same manner as a member bank.

The date of withdrawal from membership in the System for a state member bank will be determined by the date on which the Federal Reserve Bank received notice of the decision of the bank's board of directors (and shareholders where state law requires) to withdraw from membership. 1 With regard to a national bank, the date of withdrawal is the date on which such national bank received a state charter whether by conversion, merger, or consolidation.

In recognition of the fact that there may have been individual bank circumstances that delayed an individual bank's withdrawal or acquisition of a state charter, the Board, consistent with the legislative history of section 103 of the act, will consider evidence from a former member bank that it made an unambiguous irrevocable decision to withdraw from membership before July 1, 1979, and, thus, is entitled to an eight-year phase-in of required reserves. A bank that was a state member bank whose directors (and shareholders where state law requires) voted to leave the System prior to July 1, 1979, or a bank that was a national bank whose shareholders voted to convert to a state charter (including conversion by merger or consolidation) prior to July 1, 1979, and was not a member bank on March 31, 1980, may present the Board with clear, unambiguous documentation of such actions. Upon review of such information, the Board may then determine that the date that an individual bank made such an irrevocable decision is its date of withdrawal from membership. Any bank that believes that it meets these criteria, should submit full documentation to the Board as soon as possible, but in any event, no later than June 16, 1980. Such submissions should be addressed to Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

2. Reserve requirements of former member banks. The Board has determined, with respect to banks that withdrew from the System (other than by merger or consolidation) on or after July 1, 1979, and ceased maintaining reserves pursuant to Regulation D prior to March 31, 1980, to waive all federal reserve requirements for the period from March 31, 1980, through the maintenance period ending August 27, 1980. 2 Such banks will be required to maintain currently prescribed levels of federal reserves commencing with the reserve maintenance period that begins on August 28, 1980. A former member bank may commence maintaining reserves with a Federal Reserve Bank beginning on or after June 5, 1980, in order to have sufficient balances available for Federal reserve requirement purposes for the August 28-September 3 maintenance period. A former member bank that maintains full reserve balances on or after June 5, 1980, will receive access to all System services.

The Board recognizes that certain former member banks may experience hardships by being subjected to federal reserve requirements in the same manner as a member bank, notwithstanding the delayed effective date that has been established. In order to accommodate former member banks that may incur significant hardship by maintaining full reserve balances by the maintenance period beginning August 28, the Board will consider granting limited extensions beyond that date in extraordinary circumstances. A former member bank that placed its federal reserve balances, prior to March 31, 1980, in assets that have declined significantly in value and that cannot be converted to cash before August 28, 1980, without incurring significant losses may be granted a limited extension of time by the Board to maintain full federal reserve requirements. A former member bank requesting such an extension should submit information concerning such placements of reserve balances withdrawn by July 15, 1980. Such submissions should be addressed to Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

Any bank that maintained federal reserves pursuant to Regulation D during the maintenance period that included March 31, 1980, and any member bank that withdraws from the System (other than by merger or consolidation) on or after March 31, 1980, is required to maintain federal reserves against its deposits in the same manner as a member bank.

3. Mergers. Banks that withdraw from membership due to mergers or consolidations on or after July 1, 1979, will be required to maintain federal reserves in the same manner as a member bank on the proportion of their deposits attributable to former member banks. The date of a merger will be determined in accordance with the procedures established in item 1 above.

Where a nonmember bank merges or consolidates on or after July 1, 1979, with a member bank and the surviving bank is a nonmember bank, the bank is required to maintain federal reserves in the same manner as a member bank on a proportion of its deposits attributable to the absorbed member bank. This proportion will be the ratio that daily average deposits of the absorbed member bank were to the daily average deposits of the combined banks during the reserve computation period immediately preceding the date of the merger. For example, if during the last full computation period before the date of a merger or consolidation between a member bank and a nonmember bank, the ratio of member bank daily average deposits to the daily average total deposits of the merged entity is 25 percent, then the surviving nonmember bank will maintain federal reserve requirements in the same manner as a member bank on 25 percent of its deposits. The portion of the surviving bank's deposits representing nonmember bank deposits, that is, 75 percent, will be subject to federal reserve requirements on an eight-year phase-in schedule under the Act.

A ratio also will be computed for vault cash, and only the proportion of the vault cash attributable to the absorbed member bank will be permitted to be used in determining the amount of reserve balances required to be held at the Federal Reserve. For example, if during the last full computation period before the date of a merger or consolidation between a member bank and a nonmember bank, the ratio of member bank daily average vault cash to the daily average total vault cash of the merged entity is 35 percent, then the surviving nonmember bank will take that proportion of its vault cash into account in computing the reserve balance required to be maintained against its deposits attributable to the absorbed member bank.

For mergers or consolidations taking place between July 1, 1979, and August 27, 1980, where the surviving bank is a nonmember bank, federal reserves will be required to be maintained on that portion of the bank's deposits representing member bank deposits during the maintenance period beginning August 28, 1980.

Mergers and consolidations that take place on or after March 31, 1980, between a member and nonmember bank that was engaged in business on July 1, 1979, where a member bank is the surviving bank will be treated on a proportionate basis for reserve purposes. However, only the amount of deposits and vault cash of the nonmember bank outstanding on a daily average basis during the computation period immediately preceding the date of the merger will be eligible for an eight-year phase-in of reserves. The balance of the deposits of the surviving member bank will continue to be subject to member bank reserve requirements.

Mergers and consolidations involving two member banks will continue to be subject to the Board's current policy of a two-year transitional phase-in of increased reserve requirements.

4. Access to services. Any bank maintaining full federal reserves pursuant to the above policies will be permitted access to all Federal Reserve services, except that Federal Reserve Banks may require satisfactory clearing balances. However, a nonmember bank that is maintaining reserves due to the acquisition of a member bank will have access to services if it maintains federal reserves pursuant to Regulation D against all of its deposits. 1980 Fed. Res. Bull. 414.

COMPUTATION OF RESERVES--Gold Coin and Bullion

(2-260.1) Regulation D (Board Interpretations): COMPUTATION OF RESERVES -- Gold Coin and Bullion

2-260.1

COMPUTATION OF RESERVES--Gold Coin and Bullion

The Board has received numerous inquiries from member banks relating to the repeal of the ban on ownership of gold by United States citizens. Listed below are questions and answers which affect member banks and relate to the responsibilities of the Federal Reserve System.

May gold in the form of coins or bullion be counted as vault cash in order to satisfy reserve requirements? No. Section 19(c) of the Federal Reserve Act requires that reserve balances be satisfied either by a balance maintained at the Federal Reserve Bank or by vault cash, consisting of United States currency and coin. Gold in bullion form is not United States currency. Since the bullion value of United States gold coins far exceeds their face value, member banks would not in practice distribute them over the counter at face value to satisfy customer demands.

Will the Federal Reserve Banks perform services for member banks with respect to gold, such a safekeeping or assaying? No.

Will a Federal Reserve Bank accept gold as collateral for an advance to a member bank under section 10(b) of the Federal Reserve Act? No. 1975 Fed. Res. Bull. 33; 12 CFR 250.260.

COMPUTATION OF RESERVES--Shifting Funds Between Depository Institutions to Make Use of Low Reserve Tranche

(2-260.11) Regulation D (Board Interpretations): COMPUTATION OF RESERVES -- Shifting Funds Between Depository Institutions to Make Use of Low Reserve Tranche

2-260.11

COMPUTATION OF RESERVES--Shifting Funds Between Depository Institutions to Make Use of Low Reserve Tranche

Authority

Under section 19(a) of the Federal Reserve Act (12 USC 461(a)) the Board is authorized to define terms used in section 19, and to prescribe regulations to implement and to prevent evasions of the requirements of that section. Section 19(b)(2) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. In addition to its authority to define terms under section 19(a), section 19(g) of the Federal Reserve Act also gives the Board the specific authority to define terms relating to deductions allowed in reserve computation, including "balances due from other banks." This interpretation is adopted under these authorities.

Background

Currently, the Board requires reserves of zero, 3, or 10 percent on transaction accounts, depending upon the amount of transaction deposits in the depository institution, and of zero percent on nonpersonal time deposits. In determining its reserve balance under Regulation D, a depository institution may deduct the balances it maintains in another depository institution located in the United States if those balances are subject to immediate withdrawal by the depositing depository institution (§ 204.3(f)). This deduction is commonly known as the due-from deduction. In addition, Regulation D at section 204.2(a) (1)(vii)(A) exempts from the definition of "deposit" any liability of a depository institution on a promissory note or similar obligation that is issued or undertaken and held for the account of an office located in the United States of another depository institution. Transactions falling within this exemption from the definition of "deposit" include federal funds or "fed funds" transactions.

Under section 19(b)(2) of the Federal Reserve Act (12 USC 461(b)(2)), the Board is required to impose reserves of 3 percent on total transaction deposits at or below an amount determined under a formula. Transaction deposits falling within this amount are in the "low reserve tranche." Currently the low reserve tranche runs up to $42.2 million. Under section 19(b)(11) of the Federal Reserve Act (12 USC 461(b)(11)) the Board is also required to impose reserves of zero percent on reservable liabilities at or below an amount determined under a formula. Currently that amount is $3.6 million.

Shifting Funds Between Depository Institutions

The Board is aware that certain depository institutions with transaction account balances in an amount greater than the low reserve tranche have entered into transactions with affiliated depository institutions that have transaction account balances below the maximum low reserve tranche amount. These transactions are intended to lower the transaction reserves of the larger depository institution and leave the economic position of the smaller depository institutions unaffected, and have no apparent purpose other than to reduce required reserves of the larger institution. The larger depository institution places funds in a demand deposit at a small domestic depository institution. The larger depository institution considers those funds to be subject to the due-from deduction, and accordingly reduces its transaction reserves in the amount of the demand deposit. The larger depository institution then reduces its transaction-account reserves by 10 percent of the deposited amount. The small depository institution, because it is within the low reserve tranche, must maintain transaction-account reserves of 3 percent on the funds deposited by the larger depository institution. The small depository institution then transfers all but 3 percent of the funds deposited by the larger depository institution back to the larger depository institution in a transaction that qualifies as a fed-funds transaction. The 3 percent not transferred to the larger depository institution is the amount of the larger depository institution's deposit that the small depository institution must maintain as transaction-account reserves. Because the larger depository institution books this second part of the transaction as a fed-funds transaction, the larger depository institution does not maintain reserves on the funds that it receives back from the small depository institution. As a consequence, the larger depository institution has available for its use 97 percent of the amount transferred to the small depository institution. Had the larger depository institution not entered into the transaction, it would have maintained transaction account reserves of 10 percent on that amount and would have had only 90 percent of that amount for use in its business.

Determination

The Board believes that the practice described above generally is a device to evade the reserves imposed by Regulation D. Consequently, the Board has determined that, in the circumstances described above, the larger depository institution depositing funds in the smaller institution may not take a due-from deduction on account of the funds in the demand deposit account if, and to the extent that, funds flow back to the larger depository institution from the small depository institution by means of a transaction that is exempt from transaction-account reserve requirements. 12 CFR 204.135.

COMPUTATION OF RESERVES--Treatment of Trust Overdrafts

(2-260.12) Regulation D (Board Interpretations): COMPUTATION OF RESERVES -- Treatment of Trust Overdrafts

2-260.12

COMPUTATION OF RESERVES--Treatment of Trust Overdrafts

Authority

Under section 19(a) of the Federal Reserve Act (12 USC 461(a)), the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

Netting of Trust-Account Balances

Not all depository institutions have treated overdrafts in trust accounts administered by a trust department in the same manner when calculating the balance in a commingled transaction account in the depository institution for the account of the trust department of the institution. In some cases, depository institutions carry the aggregate of the positive balances in the individual trust accounts as the balance on which reserves are computed for the commingled account. In other cases depository institutions net positive balances in some trust accounts against negative balances in other trust accounts, thus reducing the balance in the commingled account and lowering the reserve requirements. Except in limited circumstances, negative balances in individual trust accounts should not be netted against positive balances in other trust accounts when determining the balance in a trust department's commingled transaction account maintained in a depository institution's commercial department. The netting of positive and negative balances has the effect of reducing the aggregate of a commingled transaction account reported by the depository institution to the Federal Reserve and reduces the reserves the institution must hold against transaction accounts under Regulation D. Unless the governing trust agreement or state law authorizes the depository institution, as trustee, to lend money in one trust to another trust, the negative balances in effect, for purposes of Regulation D, represent a loan from the depository institution. Consequently, negative balances in individual trust accounts should not be netted against positive balances in other individual trust accounts, and the balance in any transaction account containing commingled trust balances should reflect positive or zero balances for each individual trust.

For example, where a trust department engages in securities lending activities for trust accounts, overdrafts might occur because of the trust department's attempt to "normalize" the effects of timing delays between the depository institution's receipt of the cash collateral from the broker and the trust department's posting of the transaction to the lending trust account. When securities are lent from a trust customer to a broker that pledges cash as collateral, the broker usually transfers the cash collateral to the depository institution on the day that the securities are made available. While the institution has the use of the funds from the time of the transfer, the trust department's normal posting procedures may not reflect receipt of the cash collateral by the individual account until the next day. On the day that the loan is terminated, the broker returns the securities to the lending trust account and the trust customer's account is debited for the amount of the cash collateral that is returned by the depository institution to the broker. The trust department, however, often does not liquidate the investment made with the cash collateral until the day after the loan terminates, a delay that normally causes a one-day overdraft in the trust account. Regulation D requires that, on the day the loan is terminated, the depository institution regard the negative balance in the customer's account as zero for reserve requirement reporting purposes and not net the overdraft against positive balances in other accounts.

Procedures

In order to meet the requirements of Regulation D, a depository institution must have procedures to determine the aggregate of trust-department transaction-account balances for Regulation D on a daily basis. The procedures must consider only the positive balances in individual trust accounts without netting negative balances except in those limited circumstances where loans are legally permitted from one trust to another, or where offsetting is permitted pursuant to trust law or written agreement, or where the amount that caused the overdraft is still available in a settlement, suspense, or other trust account within the trust department and may be used to offset the overdraft. 12 CFR 204.136.

"DEPOSIT"--Mortgage-Backed Securities Issued by Bank and Guaranteed by GNMA

(2-260.5) Regulation D (Board Interpretations): "DEPOSIT" -- Mortgage-Backed Securities Issued by Bank and Guaranteed by GNMA

2-260.5

"DEPOSIT"--Mortgage-Backed Securities Issued by Bank and Guaranteed by GNMA *

This is in response to your letter of May 8, 1970, asking for the Board's views on certain questions relating to securities (1) issued by a member bank, (2) based on and backed by a pool of mortgages insured by the Federal Housing Administration or the Farmers' Home Administration, or insured or guaranteed by the Veterans' Administration, and (3) guaranteed by the Government National Mortgage Association pursuant to section 306(g) of the National Housing Act (12 USC 1721).

The Board understands that securities issued under the mortgage-backed pass-through program are of two types: (1) "straight pass-through" and (2) "modified pass-through." Under the straight pass-through arrangement, the issuer (the member bank) promises to pay the holder only his proportionate share of the proceeds of principal and interest as collected on mortgages in the pool. Under the modified pass-through arrangement, the issuer promises to pay all instalments of principal and interest on the securities as they become due, irrespective of whether collections on the mortgages are sufficient for such payments. GNMA guarantees timely payment of principal and interest on the securities in accordance with the terms of the securities.

The holder of a security has recourse against the issuer for failing to make payments on the securities to the extent that collections on the mortgages are available. However, the holder has no recourse against the issuer or any of its assets in the event the issuer does not pay when collections are insufficient to meet payments due on the securities, despite the promise of the issuer referred to in the preceding paragraph. The holder's recourse in that event is solely against GNMA.

You ask whether a member bank that issues the securities will have a deposit liability subject to Regulation Q as a result of its promises as to payments on the securities. Subject to specified exceptions, a member bank shall treat as a deposit liability any obligation undertaken by it principally as a means of obtaining funds to be used in its banking business. Based on the Board's understanding of the nature of the bank's promises and the holder's lack of recourse against the bank, as set forth above and confirmed by Mr.___ of your staff in a meeting with Messrs.___and___of the Board's staff, a bank that issues mortgage-backed securities of the pass-through type does not have an obligation with respect to such securities within the coverage of section 217.1(f) of Regulation Q (or of section 204.1(f) of Regulation D, relating to member bank reserve requirements). The holder has no right to require the bank to make payment on the securities out of its own funds, nor does the operation of the pool in effect result in the holder having that right. Accordingly, the member bank's promises included in the mortgage-backed securities issued by it and guaranteed by GNMA do not give rise to a deposit liability subject to Regulation Q.

You also ask whether a member state bank that issues the securities must include on its books any indication of a liability with respect to them. Again, in view of the nature of the bank's promises and the holder's remedies, a member state bank need not include in its statement of condition any indication of a liability with respect to the securities, although it might wish to make a footnote explanation of its participation in the securities program and its practices as to payments on the securities issued by it.

Finally, you ask whether the foregoing answers would be the same for subsidiaries of member banks. Under the Board's interpretations, a member bank may perform, through a wholly owned subsidiary, functions the bank is empowered to perform directly. Such a subsidiary is subject to the same restrictions as the parent and is treated by the Board the same as the bank (12 CFR 250.141; 1968 Fed. Res. Bull. 681; FRRS 3-415.4). Therefore, mortgage-backed securities issued by a wholly owned subsidiary of a member bank are the equivalent of securities issued by the member bank itself, and the foregoing answers apply to securities issued by a member bank directly or indirectly through a wholly owned subsidiary. S-2135; June 1, 1970.

"DEPOSIT"--Sale of Federal Funds by Investment Companies and Trusts in Which Entire Beneficial Interest Is Held by Depository Institutions

(2-260.51) Regulation D (Board Interpretations): "DEPOSIT" -- Sale of Federal Funds by Investment Companies and Trusts in Which Entire Beneficial Interest Is Held by Depository Institutions

2-260.51

"DEPOSIT"--Sale of Federal Funds by Investment Companies and Trusts in Which Entire Beneficial Interest Is Held by Depository Institutions

The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (title I of Pub. L. 96-221) imposes federal reserve requirements on transaction accounts and nonpersonal time deposits held by depository institutions. The Board is empowered under the act to determine what types of obligations shall be deemed a deposit. Regulation D, Reserve Requirements of Depository Institutions, exempts from the definition of "deposit" those obligations of a depository institution that are issued or undertaken and held for the account of a domestic office of another depository institution (12 CFR 204.2(a)(1)(vii)(A)(1)). These exemptions from the definition of "deposit" are known collectively as the "federal-funds" or "interbank" exemption.

Title IV of the Depository Institutions Deregulation and Monetary Control Act of 1980 authorizes federal savings and loan associations to invest in open-ended management investment companies provided the funds' investment portfolios are limited to the types of investments that a federal savings and loan association could hold without limit as to percentage of assets (12 USC 1464(c)(1)(Q)). Such investments include mortgages, U.S. government and agency securities, securities of states and political subdivisions, sales of federal funds and deposits held at banks insured by the Federal Deposit Insurance Corporation. The Federal Credit Union Act authorizes federal credit unions to aggregate their funds in trusts provided the trust is limited to such investments that federal credit unions could otherwise make. Such investments include loans to credit union members, obligations of the U.S. government or secured by the U.S. government, loans to other credit unions, shares or accounts held at savings and loan associations or mutual savings banks insured by FSLIC or FDIC, sales of federal funds and shares of any central credit union whose investments are specifically authorized by the board of directors of the federal credit union making the investment (12 USC 1757(7)).

The Board has considered whether an investment company or trust whose entire beneficial interest is held by depository institutions, as defined in Regulation D, would be eligible for the federal funds exemption from reserve requirements and interest rate limitations. The Board has determined that such investment companies or trusts are eligible to participate in the federal funds market be cause, in effect, they act as mere conduits for the holders of their beneficial interest. To be regarded by the Board as acting as a conduit and, thus, be eligible for participation in the federal-funds market, an investment company or trust must meet each of the following conditions:

1. The entire beneficial interest in the investment company or trust must be held by depository institutions, as defined in Regulation D. These institutions presently may participate directly in the federal-funds market. If the entire beneficial interest in the investment company or trust is held only by depository institutions, the Board will regard the investment company or trust as a mere conduit for the holders of its beneficial interest.

2. The assets of the investment company or trust must be limited to investments that all of the holders of the beneficial interest could make directly without limit.

3. Holders of the beneficial interest in the investment company or trust must not be allowed to make third-party payments from their accounts with the investment company or trust. The Board does not regard an investment company or trust that offers third-party payment capabilities or other similar services which actively transform the nature of the funds passing between the holders of the beneficial interest and the federal funds market as mere conduits.

The Board expects that the above conditions will be included in materials filed by an investment company or trust with the appropriate regulatory agencies.

The Board believes that permitting sales of federal funds by investment companies or trusts whose beneficial interests are held exclusively by depository institutions that--

1. invest solely in assets that the holders of their beneficial interests can otherwise invest in without limit and

2. do not provide third-party payment capabilities

offers the potential for an increased yield for thrifts. This is consistent with congressional intent to provide thrifts with convenient liquidity vehicles. 12 CFR 204.123.

"DEPOSIT"--Repos Involving Shares of MMMF Whose Portfolio Consists Wholly of U.S. Treasury and Federal Agency Securities

(2-260.52) Regulation D (Board Interpretations): "DEPOSIT" -- Repos Involving Shares of MMMF Whose Portfolio Consists Wholly of U.S. Treasury and Federal Agency Securities

2-260.52

"DEPOSIT"--Repos Involving Shares of MMMF Whose Portfolio Consists Wholly of U.S. Treasury and Federal Agency Securities

The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (title I of Pub. L. 96-221) imposes federal reserve requirements on transaction accounts and nonpersonal time deposits held by depository institutions. The Board is empowered under the act to determine what types of obligations shall be deemed a deposit (12 USC 461). Regulation D, Reserve Requirements of Depository Institutions, exempts from the definition of "deposit" those obligations of a depository institution that arise from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States government or any agency thereof that the depository institution is obligated to repurchase (12 CFR 204.2(a) (1)(vii)(B)).

The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 USC 24, ¶ 7). The statute defines "investment securities" to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, generally a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 USC 335).

The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased and sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly (Banking Bulletin B-83-58). The Board of Governors has permitted state member banks to purchase, to the extent permitted under applicable state law, shares of money market mutual funds (MMMFs) whose portfolios consist solely of securities that the state member bank may purchase directly.

The Board has determined that an obligation arising from a repurchase agreement involving shares of a MMMF whose portfolio consists wholly of securities of the United States government or any agency thereof 1 would not be a "deposit" for purposes of Regulations D and Q. The Board believes that a repurchase agreement involving shares of such a MMMF is the functional equivalent of a repurchase agreement directly involving United States government or agency obligations. A purchaser of shares of a MMMF obtains an interest in a pro rata portion of the assets that comprise the MMMF's portfolio. Accordingly, regardless of whether the repurchase agreement involves United States government or agency obligations directly or shares in a MMMF whose portfolio consists entirely of United States government or agency obligations, an equitable and undivided interest in United States and agency government obligations is being transferred. Moreover, the Board believes that this interpretation will further the purpose of the exemption in Regulations D and Q for repurchase agreements involving United States government or federal obligations by enhancing the market for such obligations. 12 CFR 204.124.

"DEPOSIT"--Participation of Depository Institutions in Federal-Funds Market

(2-260.53) Regulation D (Board Interpretations): "DEPOSIT" -- Participation of Depository Institutions in Federal-Funds Market

2-260.53

"DEPOSIT"--Participation of Depository Institutions in Federal-Funds Market

Under section 204.2(a)(1)(vii)(A), there is an exemption from Regulation D for member bank obligations in nondeposit form to another bank. To ensure the effectiveness of the limitations on persons who sell federal funds to depository institutions, Regulation D applies to nondocumentary obligations undertaken by a depository institution to obtain funds for use in its banking business, as well as to documentary obligations. Under section 204.2(a)(1)(vii) of Regulation D, a depository institution's liability under informal arrangements as well as those formally embodied in a document are within the coverage of Regulation D.

The exemption in section 204.2(a)(1) (vii)(A) applies to obligations owed by a depository institution to a domestic office of any entity listed in that section (the "exempt institutions"). The "exempt institutions" explicitly include another depository institution, foreign bank, Edge or agreement corporation, New York Investment (article XII) Company, the Export-Import Bank of the United States, Minbanc Capital Corp., and certain other credit sources. The term "exempt institutions" also includes subsidiaries of depository institutions (1) that engage in businesses in which their parents are authorized to engage or (2) the stock of which by statute is explicitly eligible for purchase by national banks.

To ensure that this exemption for liabilities to exempt institutions is not used as a means by which nondepository institutions may arrange through an exempt institution to "sell" federal funds to a depository institution, obligations within the exemption must be issued to an exempt institution for its own account. In view of this requirement, a depository institution that "purchases" federal funds should ascertain the character (not necessarily the identity) of the actual "seller" in order to justify classification of its liability on the transaction as "federal funds purchased" rather than as a deposit. Any exempt institution that has given general assurance to the purchasing depository institution that sales by it of federal funds ordinarily will be for its own account and thereafter executes such transactions for the account of others, should disclose the nature of the actual lender with respect to each such transaction. If it fails to do so, the depository institution would be deemed by the Board as indirectly violating section 19 of the Federal Reserve Act and Regulation D. 1970 Fed. Res. Bull. 38; 1973 Fed. Res. Bull. 524; 1979 Fed. Res. Bull. 927; 1988 Fed. Res. Bull. 122; 12 CFR 204.126.

"DEPOSIT"--Participation of Nondepository in Federal-Funds Market

(2-260.54) Regulation D (Board Interpretations): "DEPOSIT" -- Participation of Nondepository in Federal-Funds Market

2-260.54

"DEPOSIT"--Participation of Nondepository in Federal-Funds Market

The Board has considered whether the use of "inter-depository institution loan participations" (IDLPs) which involve participation by third parties other than depository institutions in federal-funds transactions comes within the exemption from "deposit" classification for certain obligations owed by a depository institution to an institution exempt in section 204.2(a)(1)(vii)(A) of Regulation D. An IDLP transaction is one through which an institution that has sold federal funds to a depository institution subsequently "sells" or participates out that obligation to a nondepository third party without notifying the obligated institution.

The Board's interpretation regarding federal-funds transactions (12 CFR 204.126 at 2-260.53) clarified that a depository institution's liability must be issued to an exempt institution described in section 204.2(a) (1)(vii)(A) of Regulation D for its own account in order to come within the nondeposit exemption for interdepository liabilities. The Board regards transactions which result in third parties' gaining access to the federal-funds market as contrary to the exemption contained in section 204.2(a)(1)(vii)(A) of Regulation D regardless of whether the non- depository institution third party is a party to the initial transaction or thereafter becomes a participant in the transaction through purchase of all or part of the obligation held by the "selling" depository institution.

The Board regards the notice requirements set out in 12 CFR 204.126 as applicable to IDLP-type transactions as described herein so that a depository institution "selling" federal funds must provide to the purchaser (1) notice of its intention, at the time of the initial transaction, to sell or participate out its loan contract to a nondepository third party and (2) full and prompt notice whenever it (the "selling" depository institution) subsequently sells or participates out its loan contract to a nondepository third party. 1974 Fed. Res. Bull. 36; 1988 Fed. Res. Bull. 123; 12 CFR 204.127.

"DEPOSIT"--At Foreign Branch, Guaranteed by Domestic Office

(2-260.55) Regulation D (Board Interpretations): "DEPOSIT" -- At Foreign Branch, Guaranteed by Domestic Office

2-260.55

"DEPOSIT"--At Foreign Branch, Guaranteed by Domestic Office

In accepting deposits at branches abroad, some depository institutions may enter into agreements from time to time with depositors that in effect guarantee payment of such deposits in the United States if the foreign branch is precluded from making payment. The question has arisen whether such deposits are subject to Regulation D, and this interpretation is intended as a clarification.

Section 19 of the Federal Reserve Act, which establishes reserve requirements, does not apply to deposits of a depository institution "payable only at an office thereof located outside of the States of the United States and the District of Columbia" (12 USC 371a; 12 CFR 204.1(c)(5)). The Board ruled in 1918 that the requirements of section 19 as to reserves to be carrried by member banks do not apply to foreign branches (1918 Fed. Res. Bull. 1123). The Board has also defined the phrase "any deposit that is payable only at an office located outside the United States" in section 204.2(t) of Regulation D.

The Board believes that this exemption from reserve requirements should be limited to deposits in foreign branches as to which the depositor is entitled, under his agreement with the depository institution, to demand payment only outside the United States, regardless of special circumstances. The exemption is intended principally to enable foreign branches of U.S. depository institutions to compete on a more nearly equal basis with banks in foreign countries in accordance with the laws and regulations of those countries. A customer who makes a deposit that is payable solely at a foreign branch of the depository institution assumes whatever risk may exist that the foreign country in which a branch is located might impose restrictions on withdrawals. When payment of a deposit in a foreign branch is guaranteed by a promise of payment at an office in the United States if not paid at the foreign office, the depositor no longer assumes this risk but enjoys substantially the same rights as if the deposit had been made in a U.S office of the depository institution. To ensure the effectiveness of Regulation D and to prevent evasions thereof, the Board considers that such guaranteed foreign-branch deposits must be subject to that regulation.

Accordingly, a deposit in a foreign branch of a depository institution that is guaranteed by a domestic office is subject to the reserve requirements of Regulation D the same as if the deposit had been made in the domestic office. This interpretation is not designed in any respect to prevent the head office of a U.S. bank from repaying borrowings from, making advances to, or supplying capital funds to its foreign branches, subject to Eurocurrency liability reserve requirements. 1970 Fed. Res. Bull. 140; 1988 Fed. Res. Bull. 123; 12 CFR 204.128.

"DEPOSIT"--Loan-Strip Participations

(2-260.57) Regulation D (Board Interpretations): "DEPOSIT" -- Loan-Strip Participations

2-260.57

"DEPOSIT"--Loan-Strip Participations

Effective March 31, 1988, the glossary section of the instructions for the Report of Condition and Income (FFIEC 031-034; OMB No. 7100- 0036) ("call report") was amended to clarify that certain short-term loan participation arrangements (sometimes known or styled as "loan strips" or "strip participations") are regarded as borrowings rather than sales for call-report purposes in certain circumstances. Through this interpretation, the Board is clarifying that such transactions should be treated as deposits for purposes of Regulation D.

These transactions involve the sale (or placement) of a short-term loan by a depository institution that has been made under a long-term commitment of the depository institution to advance funds. For example, a 90-day loan made under a five-year revolving line of credit may be sold to or placed with a third party by the depository institution originating the loan. The depository institution originating the loan is obligated to renew the 90-day note itself (by advancing funds to its customer at the end of the 90-day period) in the event the original participant does not wish to renew the credit. Since, under these arrangements, the depository institution is obligated to make another loan at the end of 90 days (absent any event of default on the part of the borrower), the depository institution selling the loan or participation in effect must buy back the loan or participation at the maturity of the 90-day loan sold to or funded by the purchaser at the option of the purchaser. Accordingly, these transactions bear the essential characteristics of a repurchase agreement and, therefore, are reportable and reservable under Regulation D.

Because many of these transactions give rise to deposit liabilities in the form of promissory notes, acknowledgments of advance or similar obligations (written or oral) as described in section 204.2(a)(1)(vii) of Regulation D, the exemptions from the definition of "deposit" incorporated in that section may apply to the liability incurred by a depository institution when it offers or originates a loanstrip facility. Thus, for example, loan strips sold to domestic offices of other depository institutions are exempt from Regulation D under section 204.2(a)(1)(vii)(A)(1) because they are obligations issued or undertaken and held for the account of a U.S. office of another depository institution. Similarly, some of these transactions result in Eurocurrency liabilities and are reportable and reservable as such. 12 CFR 204.132.

INTERNATIONAL BANKING FACILITIES--Policy Statement on Use of IBF Deposits and Loans

(2-261) Regulation D (Board Interpretations): INTERNATIONAL BANKING FACILITIES -- Policy Statement on Use of IBF Deposits and Loans

2-261

INTERNATIONAL BANKING FACILITIES--Policy Statement on Use of IBF Deposits and Loans

The Board believes that authorization of IBFs will enhance the competitive position of U.S. offices of depository institutions and Edge and agreement corporations, and of U.S. branches and agencies of foreign banks. The Board expects that, with respect to nonbank customers located outside the United States, IBFs will accept only deposits that support the customer's operations outside the United States and will extend credit only to finance the customer's non-U.S. operations. Deposits should not be used as a means of circumventing interest rate restrictions or reserve requirements applicable to U.S. depository institutions, Edge or agreement corporations and U.S. branches and agencies of foreign banks. This policy is required to be communicated in writing to an IBF nonbank customer at the time a loan or deposit account relationship is first established. Furthermore, nonbank foreign affiliates of U.S. residents will be required to acknowledge in writing receipt of such notice.

The following model statement could be used by IBFs to advise their nonbank deposit and loan customers of the Board's policy:

It is the policy of the Board of Governors of the Federal Reserve System that, with respect to nonbank customers, deposits received by international banking facilities may be used only to support the non-U.S. operations of a depositor (or its foreign affiliates) located outside the United States and that extensions of credit by international banking facilities may be used only to finance the non-U.S. operations of a customer (or its foreign affiliates) located outside the U.S.

The following model statement could be used by IBFs to obtain an acknowledgment of receipt of such notice upon the opening of a deposit or loan relationship from nonbank customers that are foreign affiliates of U.S. residents. (A loan relationship may be established either by opening a line of credit or by granting a loan other than under a line of credit.)

___ , a nonbank entity located outside the United States, understands that it is the policy of the Board of Governors of the Federal Reserve System that deposits received by international banking facilities may be used only to support the non-U.S. operations of a depositor (or its foreign affiliates) located outside the United States and that extensions of credit by international banking facilities may be used only to finance the non-U.S. operations of a customer (or its foreign affiliates) located outside the U.S.

___ , acknowledges that funds it deposits with the IBF of___will be used solely in support of its non-U.S. operations, or that of its foreign affiliates, and that the proceeds of its borrowings from the IBF will be used solely to finance its operations outside the United States, or that of its foreign affiliates.

STATEMENT of June 18, 1981.

INTERNATIONAL BANKING FACILITIES--Loans to Finance Operations Outside the United States

(2-262) Regulation D (Board Interpretations): INTERNATIONAL BANKING FACILITIES -- Loans to Finance Operations Outside the United States

2-262

INTERNATIONAL BANKING FACILITIES--Loans to Finance Operations Outside the United States

Beginning December 3, 1981, international banking facilities (IBFs) will be permitted under Regulations D and Q (12 CFR 204 and 217) to extend credit to a non-United States resident or to a foreign affiliate of a domestic corporation "provided that the funds are used only to finance the operations outside the United States of the borrower or its affiliates located outside the United States." Numerous inquiries have been received as to the meaning of the phrase "to finance the operations outside the United States." The purpose of this letter is to clarify some of the issues that have arisen in connection with this phrase.

An IBF will be permitted to extend credit to a foreign resident if the proceeds are to be used by the borrower to purchase goods and services for use in its non-U.S. operations, regardless of where the payment for such goods and services is made. The determining factor as to whether IBF credit is being used to finance operations outside the United States is where the goods and services ultimately will be used rather than to whom the funds will be paid. Accordingly, an IBF would be permitted, for example, to extend credit to a foreign corporation to finance the purchase of machinery and equipment from a U.S. manufacturer for use outside the United States, even if the loan proceeds are paid directly to the U.S. manufacturer.

An additional issue on which the staff has received questions involves a foreign resident's international transportation and communication operations in which the United States is an end point. For example, questions have been raised whether the business of a foreign-based airline flying from foreign cities to points in the United States would be regarded as "operations outside the United States." The staff believes that such operations should be considered as "operations outside the United States." Thus, an IBF could extend credit to a foreign airline to purchase an airliner that will be used exclusively in flights from a foreign country to points in the United States and return or between points in other foreign countries. S-2451; Nov. 9, 1981.

INTERNATIONAL BANKING FACILITIES--Secondary Market Activities

(2-263) Regulation D (Board Interpretations): INTERNATIONAL BANKING FACILITIES -- Secondary Market Activities

2-263

INTERNATIONAL BANKING FACILITIES--Secondary Market Activities

Questions have been raised concerning the extent to which international banking facilities may purchase (or sell) IBF-eligible assets such as loans (including loan participations), securities, CDs, and banker's acceptances from (or to) third parties. Under the Board's regulations, as specified in section 204.8 of Regulation D, IBFs are limited, with respect to making loans and accepting deposits, to dealing only with certain customers, such as other IBFs and foreign offices of other organizations, and with the entity establishing the IBF. In addition, an IBF may extend credit to a nonbank customer only to finance the borrower's non-U.S. operations and may accept deposits from a nonbank customer that are used only to support the depositor's non-U.S. business.

Consistent with the Board's intent, IBFs may purchase IBF-eligible assets 1 from, or sell such assets to, any domestic or foreign customer provided that the transactions are at arm's length without recourse. However, an IBF of a U.S. depository institution may not purchase assets from, or sell such assets to, any U.S. affiliate of the institution establishing the IBF; an IBF of an Edge or agreement corporation may not purchase assets from, or sell assets to, any U.S. affiliate of the Edge or agreement corporation or to U.S. branches of the Edge or agreement corporation other than the branch 2 establishing the IBF; and an IBF of a U.S. branch or agency of a foreign bank may not purchase assets from, or sell assets to any U.S. affiliate of the foreign bank or to any other U.S. branch or agency of the same foreign bank. 2 (This would not prevent an IBF from purchasing (or selling) assets directly from (or to) any IBF, including an IBF of an affiliate, or to the institution establishing the IBF; such purchases from the institution establishing the IBF would continue to be subject to Eurocurrency reserve requirements except during the initial four-week transition period.) Since repurchase agreements are regarded as loans, transactions involving repurchase agreements are permitted only with customers who are otherwise eligible to deal with IBFs, as specified in Regulation D.

In the case of purchases of assets, in order to determine that the Board's use-of-proceeds requirement has been met, it is necessary for the IBF (1) to ascertain that the applicable IBF notices and acknowledgments have been provided; or (2) in the case of loans or securities, to review the documentation underlying the loan or security, or accompanying the security (e.g., the prospectus or offering statement), to determine that the proceeds are being used only to finance the obligor's operations outside the United States; or (3) in the case of loans, to obtain a statement from either the seller or borrower that the proceeds are being used only to finance operations outside the United States, or in the case of securities, to obtain such a statement from the obligor; or (4) in the case of banker's acceptances, to review the underlying documentation to determine that the proceeds are being used only to finance the parties' operations outside the United States.

Under the Board's regulations, IBFs are not permitted to issue negotiable Euro-CDs, banker's acceptances, or similar instruments. Accordingly, consistent with the Board's intent in this area, IBFs may sell such instruments issued by third parties that qualify as IBF-eligible assets provided that the IBF, its establishing institution, and any affiliate of the institution establishing the IBF do not endorse, accept, or otherwise guarantee the instrument. 12 CFR 204.122; S-2455, Dec. 16, 1981, and Jan. 12, 1982.

NOW ACCOUNT ELIGIBILITY

(2-275) Regulation D (Board Interpretations): NOW ACCOUNT ELIGIBILITY

2-275

NOW ACCOUNT ELIGIBILITY

In response to many requests for rulings, the Board has determined to clarify the types of entities that may maintain NOW accounts at member banks.

Individuals. Any individual may maintain a NOW account regardless of the purposes that the funds will serve. Thus, deposits of an individual used in his or her business including a sole proprietor or an individual doing business under a trade name is eligible to maintain a NOW account in the individual's name or in the DBA name. However, other entities organized or operated to make a profit such as corporations, partnerships, associations, business trusts, or other organizations may not maintain NOW accounts.

Pension funds, escrow accounts, security deposits, and other funds held under various agency agreements may also be classified as NOW accounts if the entire beneficial interest is held by individuals or other entities eligible to maintain NOW accounts directly. The Board believes that these accounts are similar in nature to trust accounts and should be accorded identical treatment. Therefore, such funds may be regarded as eligible for classification as NOW accounts.

Nonprofit organizations. A nonprofit organization that is operated primarily for religious, philanthropic, charitable, educational, political or other similar purposes may maintain a NOW account. The Board regards the following kinds of organizations as eligible for NOW accounts under this standard if they are not operated for profit:

• Organizations described in section 501(c)(3) through (13), and (19) of the Internal Revenue Code (26 USC (IRC 1954) 501(c)(3)-(13) and (19));

• Political organizations described in section 527 of the Internal Revenue Code (26 USC (IRC 1954) 527); and

• Homeowners and condominium owners associations described in section 528 of the Internal Revenue Code (26 USC (IRC 1954) 528), including housing cooperative associations that perform similar functions.

All organizations that are operated for profit are not eligible to maintain NOW accounts at depository institutions.

The following types of organizations described in the cited provisions of the Internal Revenue Code are among those not eligible to maintain NOW accounts:

• Credit unions and other mutual depository institutions described in section 501(c)(14) of the Internal Revenue Code (26 USC (IRC 1954) 501(c)(14));

• Mutual insurance companies described in section 501(c)(15) of the Internal Revenue Code (26 USC (IRC 1954) 501(c)(15));

• Crop financing organizations described in section 501(c)(16) of the Internal Revenue Code (26 USC (IRC 1954) 501(c)(16));

• Organizations created to function as part of a qualified group legal services plan described in section 501(c)(20) of the Internal Revenue Code (26 USC (IRC 1954) 501(c)(20)); or

• Farmers' cooperatives described in section 521 of the Internal Revenue Code (26 USC (IRC 1954) 521).

Governmental units. Governmental units are generally eligible to maintain NOW accounts at member banks. NOW accounts may consist of funds in which the entire beneficial interest is held by the United States, any state of the United States, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

Funds held by a fiduciary. Under current provisions, funds held in a fiduciary capacity (either by an individual fiduciary or by a corporate fiduciary such as a bank trust department or a trustee in bankruptcy), including those awaiting distribution or investment, may be held in the form of NOW accounts if all of the beneficiaries are otherwise eligible to maintain NOW accounts. The Board believes that such a classification should continue since fiduciaries are required to invest even temporarily idle balances to the greatest extent feasible in order to responsibly carry out their fiduciary duties. The availability of NOW accounts provides a convenient vehicle for providing a short-term return on temporarily idle trust funds of beneficiaries eligible to maintain accounts in their own names.

Grandfather provision. In order to avoid unduly disrupting account relationships, a NOW account established at a member bank on or before August 31, 1981, that represents funds of a nonqualifying entity that previously qualified to maintain a NOW account may continue to be maintained in a NOW account. 1981 Fed. Res. Bull. 795; 1988 Fed. Res. Bull. 125; 12 CFR 204.130.

TIME DEPOSITS--Deposits of Exempt Foreign, International, and Supranational Entities

(2-280) Regulation D (Board Interpretations): TIME DEPOSITS -- Deposits of Exempt Foreign, International, and Supranational Entities

2-280

TIME DEPOSITS--Deposits of Exempt Foreign, International, and Supranational Entities

The entities referred to in section 204.2(c) (1)(iv)(E) and 204.8(a)(2)(i)(B)(5) are:

Europe

Bank for International Settlements

European Atomic Energy Community

European Coal and Steel Community

The European Communities

European Development Fund

European Economic Community

European Free Trade Association

European Fund

European Investment Bank

Latin America

Andean Development Corporation

Andean Subregional Group

Caribbean Development Bank

Caribbean Free Trade Association

Caribbean Regional Development Agency

Central American Bank for Economic Integration

The Central American Institute for Industrial Research and Technology

Central American Monetary Stabilization Fund

East Caribbean Common Market

Latin American Free Trade Association

Organization for Central American States

Permanent Secretariat of the Central American General Treaty of Economic Integration

River Plate Basin Commission

Africa

African Development Bank

Banque Centrale des Etats de l'Afrique Equatorial et du Cameroun

Banque Centrale des Etats d'Afrique del'Ouest

Conseil de l'Entente

East African Community

Organisation Commune Africaine et Malagache

Organization of African Unity

Union des Etats de l'Afrique Centrale

Union Douaniere et Economique de l'Afrique Centrale

Union Douaniere des Etats de l'Afrique de l'Ouest

Asia

Asia and Pacific Council

Association of Southeast Asian Nations

Bank of Taiwan

Korea Exchange Bank

Middle East

Central Treaty Organization

Regional Cooperation for Development

1988 Fed. Res. Bull. 122; 12 CFR 204.125.

TIME DEPOSITS--Institution's Purchase of Own in Secondary Market

(2-280.1) Regulation D (Board Interpretations): TIME DEPOSITS -- Institution's Purchase of Own in Secondary Market

2-280.1

TIME DEPOSITS--Institution's Purchase of Own in Secondary Market

Background. In 1982, the Board issued an interpretation concerning the effect of a member bank's purchase of its own time deposits in the secondary market in order to ensure compliance with regulatory restrictions on the payment of interest on time deposits, with the prohibition against payment of interest on demand deposits, and with regulatory requirements designed to distinguish between time deposits and demand deposits for federal reserve requirement purposes (47 Fed. Reg. 37,878). The interpretation was designed to ensure that the regulatory early withdrawal penalties in Regulation Q used to achieve these three purposes were not evaded through the purchase by a member bank or its affiliate of a time deposit of the member bank prior to the maturity of the deposit.

Because the expiration of the Depository Institutions Deregulation Act (title II of Public Law 96-221) on April 1, 1986, removed the authority to set interest rate ceilings on deposits, one of the purposes for adopting the interpretation was eliminated. The removal of the authority to set interest rate ceilings on deposits required the Board to revise the early withdrawal penalties, which were also used to distinguish between types of deposits for reserve requirement purposes. Effective April 1, 1986, the Board amended its Regulation D to incorporate early withdrawal penalties applicable to all depository institutions for this purpose (51 Fed. Reg. 9,629). Although the new early withdrawal penalties differ from the penalties used to enforce interest rate ceilings, secondary-market purchases still effectively shorten the maturities of deposits and may be used to evade reserve requirements. This interpretation replaces the prior interpretation and states the application of the new early withdrawal penalties to purchases by depository institutions and their affiliates of the depository institution's time deposits. The interpretation applies only to situations in which the Board's regulatory penalties apply.

Secondary-market purchases under the rule. The Board has determined that a depository institution purchasing a time deposit it has issued should be regarded as having paid the time deposit prior to maturity. The effect of the transaction is that the depository institution has cancelled a liability as opposed to having acquired an asset for its portfolio. Thus, the depository institution is required to impose any early withdrawal penalty required by Regulation D on the party from whom it purchases the instrument by deducting the amount of the penalty from the purchase price. The Board recognizes, however, that secondary-market sales of time deposits are often done without regard to the identity of the original owner of the deposit. Such sales typically involve a pool of time deposits with the price based on the aggregate face value and average rate of return on the deposits. A depository institution purchasing time deposits from persons other than the person to whom the deposit was originally issued should be aware of the parties named on each of the deposits it is purchasing but through failure to inspect the deposits prior to the purchase may not be aware at the time it purchases a pool of time deposits that it originally issued one or more of the deposits in the pool. In such cases, if a purchasing depository institution does not wish to assess an applicable early withdrawal penalty, the deposit may be sold immediately in the secondary market as an alternative to imposing the early withdrawal penalty.

Purchases by affiliates. On a consolidated basis, if an affiliate (as defined in section 204.2(q) of Regulation D) of a depository institution purchases a CD issued by the depository institution, the purchase does not reduce their consolidated liabilities and could be accomplished primarily to assist the depository institution in avoiding the requirements of the Board's Regulation D. Because the effect of the early withdrawal penalty rule could be easily circumvented by purchases of time deposits by affiliates, such purchases are also regarded as an early withdrawal of the time deposit, and the purchase should be treated as if the depository institution made the purchase directly. Thus, the regulatory requirements for early withdrawal penalties apply to affiliates of a depository institution as well as to the institution itself.

Depository institution acting as broker. The Board believes that it is permissible for a depository institution to facilitate the secondary market for its own time deposits by finding a purchaser for a time deposit that a customer is trying to sell. In such instances, the depository institution will not be paying out any of its own funds, and the depositor does not have a guarantee that the depository institution will actually be able to find a buyer.

Third-party market makers. A depository institution may also establish and advertise arrangements whereby an unaffiliated third party agrees in advance to purchase time deposits issued by the institution. The Board would not regard these transactions as inconsistent with the purposes that the early withdrawal penalty is intended to serve unless a depository institution pays a fee to the third-party purchaser as compensation for making the purchases or to remove the risk from purchasing the deposits. In this regard, any interim financing provided to such a third party by a depository institution in connection with the institution's secondary-market activity involving the institution's time deposits must be made substantially on the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other similarly situated persons and may not involve more than the normal risk of repayment.

Reciprocal arrangements. Finally, while a depository institution may enter into an arrangement with an unaffiliated third party wherein the third party agrees to stand ready to purchase time deposits held by the depository institution's customers, the Board will regard a reciprocal arrangement with another depository institution for purchase of each other's time deposits as a circumvention of the early withdrawal penalty rule and the purposes it is designed to serve. 1988 Fed. Res. Bull. 126; 12 CFR 204.131.

TIME DEPOSITS--Early Withdrawal; Extensions in Maturity

(2-280.2) Regulation D (Board Interpretations): TIME DEPOSITS -- Early Withdrawal; Extensions in Maturity

2-280.2

TIME DEPOSITS--Early Withdrawal; Extensions in Maturity

Questions have been raised about the application to certain situations of the Board's October 31, 1977 amendment to Regulation Q permitting extensions in the maturity of time deposits without imposition of an early withdrawal penalty. The attached letter, which provides examples of the impact of the amendment, should be distributed to member banks within your District.

Dear Sir:

On October 31, 1977, the Board amended section 217.4(d) of Regulation Q to permit extensions in the maturity of time deposits. This letter is intended to provide further explanation as to the circumstances under which the maturity of existing time deposit agreements may be extended without imposition of an early withdrawal penalty.

Section 217.4(d) of Regulation Q currently provides that any amendment of a time deposit contract that results in either an increase in the rate of interest paid or a change in the maturity of the deposit constitutes a payment of the time deposit before maturity that is subject to the early withdrawal penalty provision. As a result of the Board's amendment, effective December 1, 1977, section 217.4(d) will provide that any amendment resulting either in an increase in the rate of interest paid or in a reduction in the maturity of the time deposit constitutes a payment of the deposit before maturity requiring imposition of the early withdrawal penalty. Therefore, the amendment enables a member bank, at the request of its depositor, to extend the maturity of an outstanding time deposit without treating such extension of maturity as an early withdrawal so long as the rate of interest paid is not increased.

Consistent with long-standing Board policy, if a member bank extends the maturity of an outstanding time deposit, the new certificate must have a maturity from the date of extension at least equal to the minimum period necessary under section 217.7 of Regulation Q to obtain the rate of interest to be paid under the extended deposit agreement. For example, a time certificate of deposit with an original maturity of four years that has two years remaining until maturity and earns interest at a rate of 7 1/4 percent, must be extended for at least an additional two years so that the total maturity of the certificate from the date of extension is at least four years, in order for the certificate to continue to earn interest at 7 1/4 percent. The fact that the deposit has already been on deposit for two years is not relevant in determining the minimum maturity from the date of extension. In the same situation, should the depositor desire to increase the maturity for only one additional year, leaving a total of three years remaining to maturity after extension, the maximum permissible rate on such a deposit would be 6.50 percent.

Without a restriction of the kind described above, the maturity of an outstanding certificate could be extended so as to enable the depositor to obtain interest at a rate higher than that permitted for the additional time the funds will remain on deposit and thus could result in evasions of the limitations on maximum interest rates prescribed by the Board. Thus, if a four-year certificate could be amended to extend its maturity for an additional month and could continue to earn interest at the four-year rate, successive extensions would make it possible for the depositor, after an initial four years, to continue to obtain the maximum rate of 7 1/4 percent while in effect being able to withdraw his deposit at the end of each additional month. Therefore, under the Board's amendment, this type of extension is not permitted without imposition of a penalty.

The amendment to the penalty rule also enables a member bank to consolidate a customer's outstanding certificates of deposit into one new certificate so long as the rate of interest paid on the consolidated time deposit is not higher than the lowest rate of interest paid on any of the certificates being consolidated. Of course, as in the case of an extension of maturity of a single time deposit, it is required that from the date of consolidation the new certificate possess a minimum maturity at least equal to the minimum period necessary under section 217.7 of Regulation Q to obtain the rate of interest to be paid on the consolidated deposit. In no event may the maturity of any of the time deposits being consolidated be reduced as the result of the consolidation unless an early withdrawal penalty is imposed. Additional examples of the application of the new rule follow.

Example 1

The depositor holds a time certificate of deposit earning interest at a rate of 7 1/2 percent with an original maturity of six years. The certificate has three years remaining until maturity. In this situation, the maturity of the certificate must be extended for at least three years so that the maturity of the certificate from the date of extension is at least six years, in order for the bank to continue to pay interest on the certificate at a rate of 7 1/2 percent. If the maturity of the certificate is extended for only one year so that the maturity from the date of extension is four years, the maximum rate of interest that may be paid on the certificate from the date of extension is 7 1/4 percent.

Example 2

The depositor holds several certificates obtained on different dates all with original maturities of four years and earning interest at the rate of 7 1/4 percent. These certificates may be consolidated into one new certificate with a maturity from the date of consolidation of four years that earns interest at the rate of 7 1/4 percent.

Example 3

The depositor holds two certificates with original maturities of four years and six years earning interest at rates of 7 1/4 and 7 1/2 percent, respectively. The certificates have remaining maturities of two years and four years, respectively. In this case, the certificates could be consolidated into one new certificate with a maturity of four or more years from the date of consolidation earning interest at the maximum rate of 7 1/4 percent. Consolidation into one new certificate earning interest at the rate of 7 1/2 percent would not be possible without imposing an early withdrawal penalty even if the maturity were six years or more from the date of consolidation since such action would result in an increase in the rate of interest paid on one of the original deposits from 7 1/4 to 7 1/2 percent. In order to pay interest on the new certificate at the rate of 7 1/2 percent, the bank would be required to impose the early withdrawal penalty only upon the funds represent ed by the certificate with the original maturity of four years earning interest at the rate of 7 1/2 percent.

A copy of the earlier press release and Federal Register notice of the Board's action in this matter is enclosed. S-2360; Nov. 16, 1977.

Time deposits are now covered by section 204.2(c) of Regulation D.

TIME DEPOSITS--Linked to Transaction Accounts

(2-280.2) Regulation D (Board Interpretations): TIME DEPOSITS -- Linked to Transaction Accounts

See 2-287.

TRANSACTION ACCOUNTS--NOW Accounts and MMDAs

(2-285) Regulation D (Board Interpretations): TRANSACTION ACCOUNTS -- NOW Accounts and MMDAs

2-285

TRANSACTION ACCOUNTS--NOW Accounts and MMDAs

It is our understanding that at least one depository institution is offering, and several institutions have inquired about offering, an account arrangement that integrates both a money market deposit account (MMDA) and a NOW account. Under the arrangement, the depositor would initially open an MMDA. If the depositor actually exceeds the permissible number of transfers per month (six preauthorized, automatic, or telephone transfers, no more than three of which may be checks), the account automatically would be converted to a NOW account the first time a transfer occurs in excess of the limit. The account would remain a NOW for the rest of the statement cycle. At the beginning of the next statement cycle, the account would be converted back to an MMDA and the procedure would recommence. The underlying objective of such an arrangement is to allow the institution to report the account as a savings deposit for that part of the statement cycle during which the account is regarded as an MMDA, thereby avoiding transaction account reserve requirements.

Under Regulation D, the account arrangement described above is regarded as a transaction account at all times and should be reported as such, since the arrangement permits the depositor to make more than six preauthorized or telephone transfers and draw more than three checks per month. It is well established under Regulation D that the characterization of an account as a transaction account is dependent upon whether the depositor has the ability to effectuate certain transactions rather than whether such transactions actually occur. In the account arrangement in question, the depositor is authorized to effectuate transactions in excess of the limit for an MMDA and the purported existence of two accounts is merely a device to avoid reserve requirements. Any such arrangement must be reported as a NOW at all times and not as an MMDA. In addition, permitting an account to shift status as proposed would greatly complicate the interpretation of the monetary aggregates.

In establishing the reserve requirements applicable to the MMDA, the Board indicated that an MMDA will not be regarded as a transaction account if the account satisfies the conditions of section 204.2(d)(2)(ii) of Regulation D and is not otherwise regarded as a transaction account. Under Regulation D, a depository institution may monitor MMDAs on an ex post basis and contact depositors who exceed those limits on more than an occasional basis. It should be noted that an MMDA subject to such procedures is not a transaction account even if the customer has made inadvertent transfers in excess of the limit during the month and such accounts are not to be reported as transaction accounts. For customers that continue to exceed the transactions limit after being contacted, the institution is required to close the account or take away the transactions capability. Jan. 18, 1983 (revised).

TRANSACTION ACCOUNTS--Multiple Savings Deposits Treated as

(2-286) Regulation D (Board Interpretations): TRANSACTION ACCOUNTS -- Multiple Savings Deposits Treated as

2-286

TRANSACTION ACCOUNTS--Multiple Savings Deposits Treated as

Authority

Under section 19(a) of the Federal Reserve Act, the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b) establishes general reserve requirements on transaction accounts and non-personal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

Background

Under Regulation D, 12 CFR 204.2(d)(2), the term "savings deposit" includes a deposit or an account that meets the requirements of section 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make up to six transfers or withdrawals per month or statement cycle of at least four weeks. The depository institution may authorize up to three of these six transfers to be made by check, draft, debit card, or similar order drawn by the depositor and payable to third parties. If more than six transfers (or more than three third-party transfers by check, etc.) are permitted or authorized per month or statement cycle, the depository institution may not classify the account as a savings deposit. If the depositor, during the period, makes more than six transfers or withdrawals (or more than three third-party transfers by check, etc.), the depository institution may, depending upon the facts and circumstances, be required by Regulation D (footnote 5 at section 204.2(d)(2)) to reclassify or close the account.

Use of Multiple Savings Deposits

Depository institutions have asked for guidance as to when a depositor may maintain more than one savings deposit and be permitted to make all the transfers or withdrawals authorized for savings deposits under Regulation D from each savings deposit. The Board has determined that, if a depository institution suggests or otherwise promotes the establishment of or operation of multiple savings accounts with transfer capabilities in order to permit transfers and withdrawals in excess of those permitted by Regulation D for an individual savings account, the accounts generally should be considered to be transaction accounts. This determination applies regardless of whether the deposits have entirely separate account numbers or are subsidiary accounts of a master deposit account. Multiple savings accounts, however, should not be considered to be transaction accounts if there is a legitimate purpose, other than increasing the number of transfers or withdrawals, for opening more than one savings deposit.

Examples

The distinction between appropriate and inappropriate uses of multiple accounts is illustrated by the following examples:

Example 1. X wishes to open an account that maximizes his interest earnings but also permits X to draw up to ten checks a month against the account. X's bank suggests an arrangement under which X establishes four savings deposits at Bank. Under the arrangement, X deposits funds in the first account and then draws three checks against that account. X then instructs Bank to transfer all funds in excess of the amount of the three checks to the second account and draws an additional three checks. Funds are continually shifted between accounts when additional checks are drawn so that no more than three checks are drawn against each account each month.

Suggesting the use of four savings accounts in the name of X in this example is designed solely to permit the customer to exceed the transfer limitations on savings accounts. Accordingly, the savings accounts should be classified as transaction accounts.

Example 2. X is trustee of separate trusts for each of his four children. X's bank suggests that X, as trustee, open a savings deposit in a depository institution for each of his four children in order to ensure an independent accounting of the funds held by each trust.

X's bank's suggestion to use four savings deposits in the name of X in this example is appropriate, and the third party transfers from one account should not be considered in determing whether the transfer and withdrawal limit was exceeded on any other account. X established a legitimate purpose, the segregation of the trust assets, for each account separate from the need to make third-party transfers. Furthermore, there is no indication, such as by the direct or indirect transfer of funds from one account to another, that the accounts are being used for any purpose other than to make transfers to the appropriate trust.

Example 3. X opens four savings accounts with Bank. X regularly draws up to three checks against each account and transfers funds between the accounts in order to ensure that the checks on the separate accounts are covered. X's bank did not suggest or otherwise promote the arrangement.

X's bank may treat the multiple accounts as savings deposits for Regulation D purposes, even if it discovers that X is using the accounts to increase the transfer limits applicable to savings accounts because X's bank did not suggest or otherwise promote the establishment of or operation of the arrangement. 12 CFR 204.133.

TRANSACTION ACCOUNTS--Linked to Time Deposits

(2-287) Regulation D (Board Interpretations): TRANSACTION ACCOUNTS -- Linked to Time Deposits

2-287

TRANSACTION ACCOUNTS--Linked to Time Deposits

Authority

Under section 19(a) of the Federal Reserve Act (12 USC 461(a)), the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b)(2) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

Linked Time Deposits and Transaction Accounts

Some depository institutions are offering or proposing to offer account arrangements under which a group of participating depositors maintain transaction accounts and time deposits with a depository institution in an arrangement under which each depositor may draw checks up to the aggregate amount held by that depositor in these accounts. Under this account arrangement, at the end of the day funds over a specified balance in each depositor's transaction account are swept from the transaction account into a commingled time deposit. A separate time deposit is opened on each business day with the balance of deposits received that day, as well as the proceeds of any time deposit that has matured that day that are not used to pay checks or withdrawals from the transaction accounts. The time deposits, which generally have maturities of seven days, are staggered so that one or more time deposits mature each business day. Funds are apportioned among the various time deposits in a manner calculated to minimize the possibility that the funds available on any given day would be insufficient to pay all items presented.

The time deposits involved in such an arrangement may be held directly by the depositor or indirectly through a trust or other arrangement. The individual depositor's interest in time deposits may be identifiable, with an agreement by the depositors that balances held in the arrangement may be used to pay checks drawn by other depositors participating in the arrangement, or the depositor may have an undivided interest in a series of time deposits.

Each day funds from the maturing time deposits are available to pay checks or other charges to the depositor's transaction account. The depository institution's decision concerning whether to pay checks drawn on an individual depositor's transaction account is based on the aggregate amount of funds that the depositor has invested in the arrangement, including any amount that may be invested in unmatured time deposits. Only if checks drawn by all participants in the arrangement exceed the total balance of funds available that day (i.e. funds from the time deposit that has matured that day as well as any deposits made to participating accounts during the day) is a time deposit withdrawn prior to maturity so as to incur an early withdrawal penalty. The arrangement may be marketed as providing the customer unlimited access to its funds with a high rate of interest.

Determination

In these arrangements, the aggregate deposit balances of all participants generally vary by a comparatively small amount, allowing the time deposits maturing on any day safely to cover any charges to the depositors' transaction accounts and avoiding any early withdrawal penalties. Thus, this arrangement substitutes time-deposit balances for transaction-account balances with no practical restrictions on the depositors' access to their funds, and serves no business purpose other than to allow the payment of higher interest through the avoidance of reserve requirements. As the time deposits may be used to provide funds indirectly for the purposes of making payments or transfers to third persons, the Board has determined that the time deposits should be considered to be transaction accounts for the purposes of Regulation D. 12 CFR 204.134.

Regulation D (Questions and Answers)Questions and Answers About Regulation D

Regulation D (Questions and Answers)

NONTRANSFERABILITY

(2-300) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300

NONTRANSFERABILITY

Definition and Application

Q1. What does "not transferable" mean?

A. "Not transferable" means that a time deposit may not be transferred by the named depositor, except in the following ways:

• a change in ownership that is reflected on the books or records of the institution

• a pledge as collateral for a loan

• a transaction that occurs due to circumstances arising from death, incompetency, marriage, divorce, attachment, or otherwise by operation of law.

In other words, in addition to pledges and transfers by operation of law, any transaction that is reflected on the books of the institution (thus giving the institution an opportunity to reclassify the deposit, if necessary, as personal/nonpersonal for reserve reporting purposes) is permissible. The following examples of legends concerning transferability may be used:

• "Not transferable"

• "Transferable only on the records of the institution"

• "Transferable only with the permission of the institution"

• "Not transferable except as collateral for a loan or as otherwise permitted by regulations of the Federal Reserve Board"

The following statements will not satisfy the requirement concerning nontransferability:

• Not assignable

• Not negotiable

(2-300.1) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300.1

Q2. Explain the difference between "nontransferable" and "nonnegotiable."

A. A negotiable instrument is one which a buyer may take free of most defenses that the debtor on the instrument has against the original creditor. For example, if a salesperson accepts a promissory note in exchange for a product, and the product is defective, the buyer may refuse to pay the salesperson when the note becomes due; however, if the salesperson sells the note to another person and the note is negotiable, then the buyer's contention that the product is defective may not, in and of itself, be a successful defense to an action for payment brought by the third person. Negotiability is concerned simply with the cutting off of defenses. A nonnegotiable instrument can be transferred; the difference is that the buyer of the instrument is subject to the same defenses to which the original creditor was subject. A person who is willing to accept the risk of those defenses is willing to buy a nonnegotiable instrument as well as a negotiable one. The Board of Governors is concerned that if transferability were not prohibited, a secondary market in nonnegotiable certificates of deposit might develop in order to avoid reserve requirements, and that nonreservable personal time deposits would be sold to corporations. Such a practice could have an adverse impact upon the effectiveness of monetary policy.

(2-300.2) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300.2

Q3. Does an institution have to notify its customers who have accounts outstanding prior to October 1, 1980 of the new nontransferability provision of the regulation?

A. No. Deposits issued to natural persons before October 1, 1980 do not have to be nontransferable to be regarded as personal time deposits. However, if an institution modifies its existing contracts to make such accounts nontransferable, then it should notify its depositors of the change.

(2-300.3) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300.3

Nontransferability Legend

Q4. Do NOW account statements need a nontransferability legend?

A. No. NOW accounts are transaction accounts which are reservable even if held by a natural person. Transaction accounts need not have the nontransferable legend on any document.

(2-300.4) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300.4

Q5. Passbook savings accounts opened prior to October 1, 1980 need not have a nontransferability legend placed on them at the time of opening. Does the legend need to be stamped on such accounts if deposits are made after October 1?

A. No. Any personal savings or time deposit account originally issued before October 1 does not have to carry a legend concerning transferability on any document evidencing its existence, even if additional deposits are made to the account or the deposit is automatically renewed after October 1, 1980.

(2-300.5) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300.5

Q6. The legend need not be placed on a time deposit issued before October 1 that is automatically rolled over after that date. If the institution sends a letter to the depositor reminding him of the upcoming rollover, must the letter indicate nontransferability?

A. No. However, if the institution issues a new certificate to the depositor when the old one matures, the term nontransferable must appear on the deposit.

(2-300.6) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300.6

Q7. Can depository institutions stamp the words "nonnegotiable and nonassignable," rather than "nontransferable," on time and savings deposits documents?

A. No. It appears that in some jurisdictions transfers may be made that are not considered assignments. Therefore, "nonassignable" may not be used in place of "nontransferable." The inclusion of other words along with "nontransferable" is permissible so long as the latter term is not conditioned by the other words. "Nonnegotiable" may be added to the legend but may not be used as a substitute for "nontransferable."

(2-300.7) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300.7

Q8. In order for a deposit issued to a natural person on or after October 1, 1980 to be considered a personal time deposit, where must the legend regarding nontransferability appear?

A.

• For certificates of deposit or share certificates, it must appear on the certificate itself.

• For passbook accounts, it must be on the passbook itself.

• For any time or savings deposit not evidenced by a certificate or passbook, it must be on the agreement or contract which evidences the account if a copy of the agreement or contract is given to the customer when the account is opened.

A legend of nontransferability is not required on any periodic statements where such legend appears on a certificate, passbook, contract or agreement given to the depositor. For any time or savings deposit not evidenced by a certificate or passbook, if a copy of the agreement is not given to the customer, then the nontransferability legend must be on periodic statements sent to the customer. The legend does not have to appear on the following: deposit slips, teller receipts, club account coupons, identification cards, IRS Form 1099, and signature cards and other documents retained by the depository institution as its own records.

(2-300.8) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300.8

Q9. If a time or savings deposit is not evidenced by a certificate or passbook, may the nontransferability legend appear on a disclosure statement given to the depositor by the institution at the time of opening the account?

A. Yes. Under such circumstances the nontransferability legend may appear in a disclosure statement required by federal or state law or regulation that sets forth the terms of the deposit account.

(2-300.9) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-300.9

Q10. Personal savings and time accounts for which depositors receive only monthly statements rather than passbooks or certificates of deposit are required to include the legend concerning nontransferability on the periodic statement if no contract, agreement or disclosure statement required by law is given to the depositor carrying the nontransferability legend. Instead of placing the legend on the statement itself, may the legend appear in a separate piece of paper mailed to the depositor along with the monthly statement?

A. No. The nontransferability legend must appear on a document representing the account such as a certificate, passbook, contract, disclosure statement, or periodic statement. A separate piece of paper enclosed with the monthly statement would not be a document representing the account.

(2-301) Regulation D (Questions and Answers): NONTRANSFERABILITY

2-301

Q11. An institution issues a monthly statement to its natural person depositor on which is reported the balance in a transaction account, as well as the balance in a personal savings or time deposit account. Need the statement have the nontransferability legend?

A. Yes. Unless the depositor previously received a copy of the deposit contract or disclosure statement with the legend. If the statement indicates funds held in a personal savings or time deposit account, it must state that such account is nontransferable even though other types of accounts are also listed.

MISCELLANEOUS

(2-301.1) Regulation D (Questions and Answers): MISCELLANEOUS

2-301.1

MISCELLANEOUS

Q12. Are holiday club accounts considered to be transferable if the depository institution has accepted an instruction to send the payment check to a third party?

A. So long as the instruction is received at the time of withdrawal, transmittal of a payment check for a holiday club account to a third party does not constitute a transfer. This is the equivalent of closing a time or savings account and remitting the proceeds to someone other than the depositor. If the instruction were accepted at the opening of the account, then the depositor is presumed to have a transferable deposit.

(2-301.2) Regulation D (Questions and Answers): MISCELLANEOUS

2-301.2

Q13. Six-month money market certificates are required by Regulation Q to be nonnegotiable. May the nonnegotiability requirement be omitted from such certificates if they state that they are nontransferable?

A. Yes.

(2-301.3) Regulation D (Questions and Answers): MISCELLANEOUS

2-301.3

Q14. A personal time deposit may be transferred under Regulation D if the depository institution either changes the name of the account holder on its books or issues a replacement deposit instrument with the new owners' name. If the depository institution takes either of these actions, does this constitute an early withdrawal of a time deposit under Regulation Q?

A. No. Under existing Board interpretations, the sale by a depositor of his other time deposits does not constitute early withdrawal and the depository institution may record that transfer on its books without having to treat the transfer as an early withdrawal. The principal, maturity, and interest rate of the deposit must be unchanged.

TRANSACTION ACCOUNTS

(2-301.4) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-301.4

TRANSACTION ACCOUNTS

Definition and Application

Q1. Are savings accounts subject to ACH debits and credits included in the definition of transaction accounts?

A. Under the definition of "transaction account," (§ 204.2(e)(6)) orders received from an automated clearing house (ACH) to debit an account constitute preauthorized transfers. Such an account must be treated as a transaction account unless the deposit contract limits the number of such debits to three per month and it is the practice of the institution to limit such transfers to no more than three. If credits only may be made to the account, then it is not a transaction account, regardless of the number of credits made per month.

(2-301.5) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-301.5

Q2. If a customer has a savings account from which no third party or automatic withdrawals are permissible except for a weekly transfer to the depositor's club account, is that savings account a transaction account?

A. Yes. The weekly transfer falls within the definition of a preauthorized transfer. If the account were limited to three such transactions per month, then the account would not be treated as a transaction account. In this case, if the deduction were made every two weeks, then the three-transfer-per-month limitation could be met.

(2-301.6) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-301.6

Q3. Money market certificate owners are often allowed to have their interest credited periodically by the institution to another account. Does that make the certificate a transaction account?

A. No. The crediting of interest earned on one account to another account is not a transfer from the account on which the interest was earned.

(2-301.7) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-301.7

Q4. Is a savings account a transaction account merely because a depositor is permitted to mail a request to an institution to transfer funds to a third party?

A. No. The Board of Governors has always treated letter requests as the functional equivalent to the depositor coming into the banking office; thus, the ability to make transfers from a personal account in response to a letter mail request does not make that account a transaction account. Transfers in response to requests by telephone or other electronic means are not covered by this rule; the capability to make such transfers may cause the account to be a transaction account.

(2-301.8) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-301.8

Q5. Does an account which by its terms or pursuant to an agreement permits transfers to a checking, NOW, or share draft account to cover occasional overdrafts fall within the definition of transaction account?

A. A number of institutions have entered into agreements with their customers providing that in the event the customer should overdraw a checking, NOW, or share draft account, the institution will transfer from that customer's savings account an amount sufficient to cover the overdraft. Under Regulation D, an account, including a regular savings account or regular share account, is considered to be a transaction account, if under its terms, or by practice of the depository institution, the depositor is permitted or authorized to make more than three withdrawals per month for purposes of transferring funds to another account or for making a payment to a third party by means of a preauthorized or telephone agreement, order, or instruction. The availability of the overdraft protection plan that is described above would not in and of itself require that the savings account or share account from which transfers could be made be regarded as a transaction account if no more than three such transfers are permitted or authorized in a calendar month. If, however, more than three transfers from a savings account not otherwise regarded as a transaction account are permitted, or if the plan is promoted as something other than overdraft protection, then the savings account would be regarded as a transaction account and the entire balance in the account would be subject to transaction account reserve requirements.

(2-301.9) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-301.9

Q6. Is a savings account a transaction account by virtue of transfers being made into the account by telephone or preauthorized order?

A. No. The fact that transfers are made into an account does not make that account a transaction account.

(2-302) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-302

Q7. If under the terms of a savings account, a depositor appearing at the depository institution is permitted to withdraw funds in the form of a cashier's or officer's check, endorse the check and redeposit the funds in an account of another person at the same institution, would such an account be considered a transaction account?

A. No. The ability of depositor to make withdrawals from an account by appearing at the institution in person does not render an account a transaction account regardless of the manner of payment of the withdrawal to the depositor. In this regard, an account would not be a transaction account merely because a depositor appearing in person at the institution can withdraw funds directly in the form of cash, check (even if made payable to a third party), money order, or travelers' checks. Note, however, that, if a depositor is able to transfer funds from his savings account through an automated teller machine (ATM) or remote service unit (RSU) to another person's account at the institution, that savings account is a transaction account.

(2-302.1) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-302.1

Q8. Many institutions offer their depositors "prestige cards" that allow the depositors to withdraw funds from their savings accounts by filling out a withdrawal slip at another institution. This type of service is also known as "traveler's convenience." The institution disbursing the funds sends the withdrawal slip to the depositor's institution and obtains payment through the collection process. Does this service make the savings account a transaction account?

A. No. The transaction is viewed simply as the depositor making a direct withdrawal from his savings account.

(2-302.2) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-302.2

Q9. A depositor with a savings account leaves a supply of deposit slips with the depository institution. The deposit slips are for a checking account held by the depositor at another depository institution. The depositor telephones the institution from time to time and requests that funds be withdrawn from his savings account in the form of a check and that the check, along with the deposit slip, be mailed or delivered to the institution holding his checking account. In some instances the depositor may have standing instructions with the institution to mail or deliver funds at certain intervals. Does this practice make that savings account a transaction account?

A. Yes. The capability of making such telephone or preauthorized transfers could render an account a transaction account since the transfer is made to a third party, i.e. the depository institution at which the checking account is maintained. However, if such transfers were limited to three or less per calendar month (and the account did not otherwise meet the definition of a transaction account) then the account would not be regarded as a transaction account.

(2-302.3) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-302.3

Q10. How is a depository institution to treat compensating balances of the United States government kept in Treasury Tax and Loan deposit accounts?

A. If the deposit is subject to immediate withdrawal by the government, then it must be treated as a demand deposit of the government and reserved against as a transaction account. Note balances in TT&L accounts are exempt from reserves and other funds received from the U.S. government in the form of borrowings, rather than deposits, are exempt from reserves.

(2-302.4) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-302.4

Three-Transfers-Per-Calendar-Month Rule

(A "calendar month" includes any statement cycle or similar period of at least four weeks.)

Q11. If a depository institution permits ACH debits to an account and does not limit the number of such debits by contract to three per calendar month, is the account regarded as a transaction account?

A. Yes. A depository institution must regard an account that may permit in excess of three ACH debits per month as a transaction account even though three or fewer transfers per calendar month actually are being made. Since ACH debits are regarded as preauthorized transfers, they must be limited to three or fewer per calendar month in order for the account not to be regarded as a transaction account.

(2-302.5) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-302.5

Q12. Regulation E--Electronic Funds Transfers (12 CFR 205) requires that amendments to certain account agreements cannot be effective unless the customer is given 21 days' written notice. If a depository institution wants to amend its account agreement to limit the number of preauthorized or telephone transfers to three or less per calendar month and the account is subject to the Regulation E notice requirement, when is the account agreement change effective for Regulation D reserve requirement purposes?

A. For purposes of reserve requirements, an amendment to an account agreement is regarded as effective when sent by the depository institution. Accordingly, an account for which a Regulation E change of terms notice has been sent may be regarded as exempt from the definition of "transaction account" even though more than three transfers could be effected during the interim period until the Regulation E notice becomes effective.

(2-302.6) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-302.6

Q13. Is notification to customers required if a depository institution desires to establish a limit on preauthorized and telephone transfers of three per calendar month?

A. As a general matter, the Board has had a long-standing position that customers should be notified in writing of any change in the terms of a deposit account that is adverse to the customer. The necessity of notifying customers of a limit imposed on telephone and preauthorized transfers depends on a number of factors, including other regulatory requirements, such as Regulations E and Q and those imposed under state law. A depository institution that has not explicitly provided in its deposit agreement or other representations the right of its depositors to make withdrawals by telephone may not necessarily have to send notice to its customers that such service will be limited in the future. However, a depository institution that provides by written contract or agreement that telephone or preauthorized orders may be made would be required to notify each customer in writing of the change in terms. This notice, however, may be required by local law and disclosure requirements of other federal and state regulatory requirements, not by Regulation D.

(2-302.7) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-302.7

Q14. If under the terms of an account, a depositor is not permitted to make more than three telephone or preauthorized transfers per calendar month, what steps must a depository institution take to prevent more than three transfers? Is a fourth transfer in a calendar month absolutely prohibited?

A. As stated in the Federal Register preamble to Regulation D, "A depository institution is required to establish a system or other procedure to insure that no more than three [telephone or preauthorized] transfers are made during any calendar month from such accounts" (45 Fed. Reg. 56009). The purpose to be served by a monitoring system is to establish that it is not the practice of the depository institution (12 CFR 204.2(e)(6)) to allow more than three telephone or preauthorized transfers, notwithstanding a deposit contract term to that effect. A system under which a depository institution can identify prior to making a requested transfer whether the limit is being adhered to would meet this requirement.

An institution also is permitted to monitor on an ex post basis its accounts that have limited telephone and preauthorized transfer privileges. Under this procedure, an institution may determine which accounts made more than three transfers in a particular month. If the institution contacts the customer and informs him that the contract terms were violated and/or that the institution has other account services available if the customer desires an account for transaction purposes, this would indicate that it is not the practice of the institution to allow more than three transfers. Other factors that would be relevant in determining whether it is the practice of the institution to allow more than three telephone or preauthorized transfers per month under an ex post monitoring system would be the number of accounts that have restricted transfer privileges and the relative number that exceed the established limit.

It also is permissible for an institution to provide by contract that a fourth transfer in a calendar month will constitute an agreement by the customer to accept a new type of deposit account that allows unlimited telephone or preauthorized transfers. In this regard, a change in pricing in the new account may serve as a disincentive to customers making the fourth transfer. At the time the fourth transfer is made and into the future, the account would then be classified as a transaction account. (An institution may not establish an arrangement whereby a transaction account is converted to a nontransaction account because three or less transfers are made in a particular month.)

As an alternative approach to satisfy the three-transfer-per-month rule, institutions may use a procedure of reclassifying as transaction accounts those accounts that incur more than three telephone or preauthorized transfers in a calendar month. Once an account is classified as a transaction account, then it may not revert to nontransaction account status.

(2-302.8) Regulation D (Questions and Answers): TRANSACTION ACCOUNTS

2-302.8

Q15. Are intrafamily allocations of a direct payroll deposit regarded as part of the three telephone or preauthorized transfers allowable per month in section 204.2(e)(6)?

A. Direct deposit transactions at many depository institutions require that all funds be deposited initially only to one account of a customer. Institutions and depositors have entered into agreements whereby funds involving direct deposit transactions are subsequently transferred to other accounts of the employee or his or her family at the same institution. Where a deposit is made directly to one account but within a very short time routine disbursements of a portion of a payroll deposit are made to family member accounts or other accounts of the depositor, such disbursements are an element of the deposit transaction and are not to be regarded as transfers. Thus, the capability of a depositor to distribute funds in this manner would not in and of itself render an account to which the payroll funds are initially deposited to be a transaction account.

TIME DEPOSITS (AND SAVINGS DEPOSITS)

(2-302.9) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-302.9

TIME DEPOSITS (AND SAVINGS DEPOSITS)

Definition--Personal/Nonpersonal

Q1. Must passbook savings be broken down between personal and nonpersonal?

A. Yes. Savings accounts are treated as a class of time accounts, and therefore savings deposits must be classified as personal or nonpersonal and reported separately.

(2-303) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303

Q2. Are time deposits of a "personal corporation" considered to be personal time deposits?

A. A time deposit of any corporation, including a corporation owned by one person, is nonpersonal. In order to be a personal time deposit, the entire beneficial interest of a nontransferable time deposit must be held by a natural persons(s) or a sole proprietorship.

(2-303.1) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303.1

Q3. Are time deposits of an estate considered to be personal time deposits?

A. A time deposit held in the name of an estate will be personal or nonpersonal depending on the status of the named beneficiaries of the estate. If all of the beneficiaries are natural persons, the deposit is a personal time deposit. If any beneficiary is not a natural person, the deposit is nonpersonal. Creditors of the estate are not considered beneficiaries of the estate.

(2-303.2) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303.2

Q4. Is an account personal if it is held in the name of an association such as a bowling club or vacation club, or of a monastery or convent?

A. No. Accounts in which any beneficial interest is held by anyone other than a natural person are nonpersonal.

(2-303.3) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303.3

Q5. Are the trust deposits of pension plans, profit-sharing plans, or other similar plans classified as personal or nonpersonal time deposits?

A. The classification of such deposits as personal or nonpersonal depends on the terms of the specific plan underlying the deposit. Such deposits shall be classified as personal only if they are nontransferable and if the entire beneficial interest is held by natural persons. If any beneficial interest is held by other than a natural person, no matter how small the beneficial interest held, the entire deposit shall be classified as nonpersonal.

(2-303.4) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303.4

Q6. Are holiday or vacation club accounts reservable?

A. Club accounts are treated as either time or savings deposits and are either personal or nonpersonal. If the deposit qualifies as a personal time or savings deposit, it is not reservable.

(2-303.5) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303.5

Q7. Are Keogh (or Defined Benefit Keogh) accounts in the name of a partnership excluded from reserve requirements?

A. Yes. Nontransferable time deposits held in Keogh or IRA accounts are presumed to be for the beneficial interest of individuals under section 204.2(f)(2).

(2-303.6) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303.6

Q8. A bearer certificate of deposit issued to a natural person prior to October 1, 1980, is exempt from reserve requirements on nonpersonal time deposits. The institutions have no record of the purchasers of these bearer CDs; a record of the owner is made only at maturity, when the holder obtains the interest on the CD and must record his identity for tax purposes. Is a depository institution required to regard the amount of all bearer CDs issued prior to October 1, 1980 as nonpersonal time deposits if they cannot show that they were issued to natural persons?

A. No. If bearer CDs have fixed maturities, depository institutions are permitted to estimate the distribution of such deposits between personal and nonpersonal by use of reasonable sampling techniques. Estimates may be based on past experience, current redemptions, or other reasonable inquiry.

For deposits issued on or after October 1, 1980, depository institutions are required to record the actual distribution between personal and nonpersonal time deposits. Of course, all transferable time deposits, including negotiable or bearer CDs, are nonpersonal time deposits regardless of to whom they are issued or who holds any beneficial interest in the deposit.

(2-303.7) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303.7

Q9. Escrow accounts may be treated as personal savings or time accounts if the entire beneficial interest in the funds is held by natural persons. Does this rule apply to tenant security deposits?

A. Yes. If all of the tenants whose security deposits are held in an account by a landlord are natural persons, that account may be treated as personal. If a landlord has both natural person and corporate or organizational tenants, the landlord could be asked to place the security deposits of natural persons in a separate account, and that account could be treated as personal.

(2-303.8) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303.8

Q10. Are time deposits issued to the Bureau of Indian Affairs as custodian for an Indian tribe holding the entire beneficial interest in the funds personal or nonpersonal?

A. Such deposits are nonpersonal since an Indian tribe is considered to be an organization or association.

(2-303.9) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-303.9

Definition--Natural Persons

Q11. Because a transfer of a time deposit to an estate upon the death of the owner need not be done with notice to the institution, how can the institution be required to determine whether all of the beneficiaries are natural persons?

A. If such a transfer occurs without notice to the institution, then it need not make the determination. However, if the institution is asked to change the name on the account to that of the estate, then it must make that determination.

(2-304) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304

Q12. The account of a decedent's estate is personal only if all of the beneficiaries are natural persons. In many cases, this is impossible to determine. For example, many wills have contingent interests, in which any remainder will go to a charity. Also, many wills give the executor a power of appointment, and it may not be known who the executor will appoint. Also, many institutions do not accept wills on advice of counsel in order to avoid being held liable for not acting in accordance with the will. The same is true in many cases for trusts. How are these cases to be treated?

A. The regulation requires that beneficiaries be natural persons in order to treat the account as personal. Remainder interests and powers of appointment may be ignored. In addition, an institution may reasonably rely on the representation of the executor or trustee that all beneficiaries, with the exception of contingent interests and powers of appointment, are natural persons, so long as the institution does not know and has no reason to know that the contrary is true.

(2-304.1) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304.1

Q13. Many decedents' estates are in the hands of the public administrator because the person died intestate (i.e., without a will). In such cases, how is the beneficial interest to be determined?

A. In the case of decedents' estates in the hands of the administrator, the funds usually end up in the hands of natural persons or are escheated to the state. For purposes of convenience, these accounts may all be treated as personal.

(2-304.2) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304.2

Q14. Many trust departments often place funds in a single time or savings account in the commercial department of the institution. May an institution determine the proportion of funds in that account that are allocable to trusts or estates in which the entire beneficial interest is owned by natural persons and regard that amount as a personal deposit? May the institution establish a percentage of the account that is personal and use that percentage each day?

A. No. The trust department may place its funds in two accounts, one personal and one nonpersonal, but the funds in the personal account must be from trusts and estates in which the beneficial interest is held entirely by natural persons, and this may not be determined by estimation or percentages.

(2-304.3) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304.3

Q15. Depository institutions may accept the representations of trustees, executors, and escrow agents that the entire beneficial interest of funds in a time or savings account are natural persons in order to regard the account as personal. Must that representation be made in writing?

A. Yes. However, the representation may simply be noted on the signature card or other instrument evidencing the account that is signed by the trustee, executor or escrow agent.

(2-304.4) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304.4

Q16. A savings or time deposit in the name of a trustee may be treated as personal only if all of the beneficiaries are natural persons. Does this rule apply in the case of Totten trusts?

A. No. Totten trusts are not true trusts covered by this rule. A Totten trust is one in which the owner of the funds states that the account is in the name of himself in trust for another, and the intent of the depositor is simply to make it possible for the other to obtain the funds from the institution upon the depositor's death. The intent of the depositor is not to give any beneficial interest to the other during the depositor's lifetime; the depositor has the right to revoke the Totten trust at any time, and the other has no beneficial interest in the funds during that time. Accordingly, a Totten trust in the name of a natural person in trust for an entity that is not a natural person (for example, "Mary Jones in trust for St. Luke's Church") is personal, and exempt from reserves, so long as the depositor has the right to revoke the designation. An institution is responsible for determining that accounts in such names are in fact Totten trusts rather than real trusts. If the institution is satisfied that there is no real trust involved in operating such an account, it may treat the account as a Totten trust.

(2-304.5) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304.5

Escrow Accounts

Q17. How should escrow accounts be classified on the reports?

A. If there is an agreement between the depositor and the institution requiring the funds to be placed in a specific type of account (demand, savings, or time), the escrow funds must be reported as that type of account. If there is no such agreement, the institution, acting as agent for itself, may place those funds in the type of account the institution deems appropriate.

(2-304.6) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304.6

Q18. Does an institution have to go through its entire mortgage portfolio in order to identify each mortgagor as individual or corporate for the purpose of separating its mortgage escrow account into two accounts, one personal and one nonpersonal?

A. In order to treat an escrow account as a personal savings account, all of the funds in the escrow account must be received from natural persons. Thus, if an institution has both individuals and corporations as mortgagors, the escrow account must be treated as nonpersonal unless a separation into two accounts is made and personal and nonpersonal funds are segregated.

(2-304.7) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304.7

Q19. How is the determination to be made as to whether escrow funds held in a time or savings account, established in connection with a loan extended by the same institution, are personal or nonpersonal deposits?

A. Such escrow accounts are to be identified as either personal or nonpersonal based on the identity of the party who has the beneficial interest in the account, as determined by state law. If the beneficial interest is held entirely by natural persons, the account may be classified as personal.

(2-304.8) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304.8

Q20. How are other escrow accounts determined to be personal or nonpersonal?

A. Other escrow accounts, such as landlord security deposits and earnest money deposits, are identified as personal or nonpersonal deposits on the basis of whether, under state law, the entire beneficial interest in the funds is held by a natural person.

(2-304.9) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-304.9

Miscellaneous

Q21. A financial administrator for a court holds funds in time deposit accounts on behalf of the court pending the outcome of litigation. In the case of funds awaiting disposition due to litigation, how may a determination of ownership be made?

A. In the case of funds awaiting disposition due to litigation, the institution will need to determine from whom the funds were obtained. That person is treated as having the beneficial interest until final disposition is determined. If that person is a natural person, then the account may be treated as personal.

(2-305) Regulation D (Questions and Answers): TIME DEPOSITS (AND SAVINGS DEPOSITS)

2-305

Q22. Which type of transactions involving mortgage pass-through securities and mortgage loan participations are reservable under Regulation D?

A. If the originating depository institution is obligated to incur more than the first 10 percent of loss associated with a pool of conventional non-federally insured mortgages, then any funds raised through issuance and sale of such securities to nonexempt entities are subject to reserve requirements. This, however, does not apply to normal mortgage loan participation transactions where the buyer and seller of a participation in a mortgage loan or pool of mortgages share all risk of loss on a pro rata basis. In such instances any funds raised through the sale of such participations are not subject to reserve requirements.

BANKER'S ACCEPTANCES

(2-305.1) Regulation D (Questions and Answers): BANKER'S ACCEPTANCES

2-305.1

BANKER'S ACCEPTANCES

Q1. Does the sale of an eligible acceptance under a repurchase agreement create a reservable liability?

A. Yes. Only U.S. government and agency securities may be sold under repurchase agreement to entities other than depository institutions free of reserves.

(2-305.2) Regulation D (Questions and Answers): BANKER'S ACCEPTANCES

2-305.2

Q2. Has the determination of the maturity of eligible banker's acceptances exempt from reserve requirements changed under revised Regulation D?

A. Yes. Formerly any eligible banker's acceptance having not more than six months' sight to run would not be exempt from reserve requirements until the remaining maturity was 90 days or less at the time of discount. Under revised Regulation D, all eligible banker's acceptances described in paragraph 7 of section 13 of the Federal Reserve Act (12 USC 372) having not more than six months' sight to run are exempt from reserve requirements.

FEDERAL FUNDS

(2-305.3) Regulation D (Questions and Answers): FEDERAL FUNDS

2-305.3

FEDERAL FUNDS

Q1. A depository institution purchases federal funds through a broker (not a depository institution) that is acting as agent for a depository institution. Are the federal funds reserve-free?

A. Yes. Federal funds purchased from a depository institution are not considered to be a deposit under section 204.2(a)(1)(vii)(A)(1). If the broker acts solely as agent, the funds in the example are considered to have been purchased from the depository institution.

(2-305.4) Regulation D (Questions and Answers): FEDERAL FUNDS

2-305.4

Q2. Are borrowings from corporate central credit unions exempt from reserve requirements?

A. Yes. All credit unions, including corporate centrals, are "exempt" entities regardless of whether or not they are required to hold reserves with the Federal Reserve. Thus, borrowings by depository institutions from corporate central unions are not subject to reserve requirements.

(2-305.5) Regulation D (Questions and Answers): FEDERAL FUNDS

2-305.5

Q3. Repurchase agreements on securities guaranteed as to principal and interest by the U.S. government or an agency thereof (RPs) are exempt from reserve requirements, as are direct borrowings from the U.S. government or an agency thereof. Are Ginnie Mae (Government National Mortgage Association), Fannie Mae (Federal National Mortgage Association), Freddie Mac (Federal Home Loan Mortgage Corporation), and Sallie Mae (Student Loan Marketing Association) agencies of the U.S. government?

A. Yes. Sallie Mae is also a government agency for this purpose. In addition, direct borrowings in the form of promissory notes or other similar instruments in the name of the U.S. government or an agency thereof are excluded from the definition of deposits and, thus, are exempt from reserves. Such exemption applies to borrowings that are in the name of departments of the U.S. government such as the Bureau of Indian Affairs. However, liabilities that are booked as deposits by the institution are regarded as deposits because they are not "borrowings."

(2-305.6) Regulation D (Questions and Answers): FEDERAL FUNDS

2-305.6

Q4. The permissible collateral for outstanding due bills consists of securities of similar type and comparable maturity to the security underlying the due bill. What is considered to be comparable maturity for this purpose?

A. All Treasury bills may be treated as being of comparable maturity to each other because they are issued in original maturities of one year or less. Obligations that have maturities within a range of time that is normally referred to as a common group may be substituted for each other. In this regard, obligations that are referred to as "long term," for example, may be substituted for each other even though they might have maturities that vary by as much as 10 years. This may be determined by common usage in the market place. Shorter-term securities would have a narrower time range for the purpose of determining comparability of maturity. In determining the maturity comparability of two securities, maturity may be determined on the basis of the time remaining to maturity of a particular obligation.

CALCULATIONS AND REPORTING

(2-305.7) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-305.7

CALCULATIONS AND REPORTING

Q1. Are depository institutions that have zero reserve requirements required to report deposit and other data to the Federal Reserve?

A. Yes. All depository institutions, including bankers' banks, are required to submit data on Form F.R. 2900 in accordance with Regulation D.

(2-305.8) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-305.8

Q2. How are time deposit ratios for old reserve requirements to be calculated for member banks (and former member banks) that are involved in mergers subsequent to August 6, 1980?

A. The time deposit ratios for a combination of member banks (or former member banks) will be calculated as a weighted average of the individual ratios. The weights are to be based on the daily average amount of time deposits for each of the institutions involved over the reserve computation period immediately preceding the merger.

For example, suppose that two member banks that had total time deposits of $15 million and $35 million and ratios of .0325 and .0340, respectively, merge. The required reserve ratio on time deposits for the merged bank would be $(0.0325 \times (15/50)) + (0.0340 \times (35/50)) = 0.03355$.

(2-305.9) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-305.9

Q3. What is the definition of total deposits to be used to determine whether quarterly reporters have reached 15 million?

A. Gross deposits, the sum of items 7, 12, and 15 on the F.R. 2900, will be used to determine the continuing eligibility of quarterly reporters as set forth in section 204.3(d)(3).

(2-306) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-306

Q4. Does item 2, "U.S. Government Demand Deposits," apply only to those institutions that have been designated as Treasury tax and loan depositories?

A. No. Regardless of whether or not an institution has been designated as a depository, any institution that has deposit accounts subject to withdrawal on demand that are due to, or subject to control or regulation by the U.S. government must report such balances in item 2. For example, any institution that withholds federal income taxes, social security taxes, or other federal tax payments from the salaries of its employees must report the unremitted balance of such deposits in item 2. However, TT&L note balances are not to be reported as deposits in this item or elsewhere on the report.

(2-306.1) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-306.1

Q5. How should transaction accounts that meet the criteria for more than one type of account be reported on the F.R. 2900?

A. All demand deposit accounts should be classified as demand deposits (items 1, 2, or 3) even if preauthorized or telephone transfers or third party payments through the use of debit cards, ATMs, or RSUs are allowed. Similarly, all NOW accounts or share draft accounts should be classified as NOW/share draft accounts (item 6), even if preauthorized or telephone transfers or third-party payments through the use of debit cards, ATMs, or RSUs are allowed. Savings or time deposit accounts that meet the criteria for ATS accounts should be classified as ATS accounts (item 4), even if telephone or preauthorized transfers or third-party payments through the use of debit cards, ATMs, or RSUs are allowed. Savings or time deposit accounts other than NOW, share draft, and ATS accounts that permit more than three telephone or preauthorized transfers per month or that permit third-party payments through the use of debit cards, ATMs, or RSUs should be reported as telephone or preauthorized transfer accounts (item 5).

(2-306.2) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-306.2

Q6. Are time deposits with a current balance of $100,000 or more reported on line 16 of F.R. 2900, or does it include only time deposits with an initial deposit of at least $100,000?

A. All time deposits with balances of $100,000 or more at the time of reporting must be reported on line 16 of F.R. 2900.

(2-306.3) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-306.3

Q7. If a corporation presents a credit union with a check drawn on another depository institution for the purpose of depositing in the credit union the corporation employee's withheld savings from a payroll but does not provide the credit union with a listing showing the distribution of such withheld savings, how should the credit union report this transaction on the F.R. 2900?

A. The credit union should report the liability for the deposited payroll savings in item 3 (Other Demand) of the FR 2900 but this amount may be offset by the deduction for cash items in process of collection during the time required for the check to clear.

After the check clears, if the distribution listing is still not provided to the credit union or if the credit union does not distribute the lump sum deposit among the appropriate members, the credit union is not entitled to the cash items in process of collection deduction from those funds. The payroll deposit remains in Other Demand and reserves must be held against the deposit until the funds are distributed to the proper members' accounts.

(2-306.4) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-306.4

Q8. Many banks receive payments from other banks with unclear information about to whom the funds should be credited. The practice of many institutions is to credit those funds to a suspense account. The funds remain in that account until the institution determines the party to whom the funds are to be credited or transmitted. This process for each such payment may take several days or weeks. During that time, how must an institution report that suspense account for reserve purposes? Many foreign banks find that 90 percent of payments made to them are to be credited to their parent's account, and thus most of these funds should have been subject to Eurocurrency, rather than domestic, reserves during that period.

A. Institutions must regard the entire amount of funds in suspense accounts each day as transaction accounts (to be reported as other demand deposits in item 3 of the FR 2900) unless they determine from their past experience that a percentage of such funds usually are to be treated otherwise. For example, if a United States branch of a foreign bank finds that 90 percent of the funds placed in a suspense account normally go to its parent, it may treat 90 percent of its suspense account each day as a balance due to its parent subject to the Eurocurrency reserve requirement and 10 percent as a transaction account.

(2-306.5) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-306.5

Q9. The instructions to FR 2900 indicate that a bona fide cash management arrangement must be evidenced by a prior written agreement between the reporting depository institution and the customer authorizing transfers between transaction accounts of the customer. Does this mean that there must actually be a reduction on the books of the institution in order to reduce the balance by the overdraft amount for purposes of reserves?

A. An actual transfer on the books of the institution is not necessarily required. Bona fide cash management purposes can be demonstrated in a number of situations. The fact that a depository institution has the ability to offset an overdraft with funds in another account is sufficient to serve the purposes of Regulation D.

(2-306.6) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-306.6

Q10. How are loans in process to be treated for purposes of reporting on the FR 2900?

A. Loans in process arise in at least two different contexts.

(1) When a depository institution issues a cashier's check representing mortgage or other loan proceeds and delivers the check to a settlement agent before the loan closing, the cashier's check represents a demand deposit and the amount of the check is reservable from time of issuance as a transaction account.

(2) Thrift institutions commonly have a liability "contra" account entitled "loans in process" that represents unadvanced portions of construction loan commitments. Such commitments are contingent liabilities of the depository institution and are not subject to reserves. When a portion of the loan commitment is advanced, a reservable liability would be created if disbursement were made by issuance of an officer's check or by credit to a deposit account.

(2-306.7) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-306.7

Q11. A depository institution ("seller") sells money orders on consignment from a second depository institution ("issuer"). Funds are not remitted to the issuer until it notifies the seller that the money orders have been received for payment and the funds are then remitted by the seller. How are the funds representing the proceeds of the money order sale to be reported?

A. The money order proceeds are a deposit of the selling institution until remitted to the issuer. If the issuer is a depository institution, then the unremitted amount held by the seller represents a balance due to a depository institution.

(2-306.8) Regulation D (Questions and Answers): CALCULATIONS AND REPORTING

2-306.8

Q12. The instructions to FR 2900 for credit unions provides under "Record-keeping":

"Note: If, according to your standard accounting practices, closing balances for accounts reported on this report are not available on a daily basis, you may report the same closing balance for subsequent days provided that your closing balances for these accounts are updated at least once a week. For example, a credit union that uses a weekly batch system may have closing balances only as of each Friday. In this case, the balances for the preceding Friday should be reported for Thursday of the current computation week; the balances for Friday of the current computation week should be reported not only for Friday but also for the following Saturday, Sunday, Monday, Tuesday, and Wednesday, and for the first Thursday of the next computation period."

Does this reporting principal apply to other similarly situated depository institutions?

A. Yes. If a depository institution posts its general ledger daily or generates a daily balance sheet, then all amounts reported for reserve requirements purposes on the FR 2900 must be updated daily. However, as indicated above, if it is the accepted accounting practice and standard for a particular segment of the industry to post the general ledger less frequently than daily, then weekly updating is permitted.

ELIGIBLE RESERVE ASSETS

(2-306.9) Regulation D (Questions and Answers): ELIGIBLE RESERVE ASSETS

2-306.9

ELIGIBLE RESERVE ASSETS

Vault Cash

Q1. May coin sent by an institution to a coinwrapping servicer and kept there for several days be treated as vault cash?

A. Yes, so long as the institution continues to book the coin as an asset and has the right to obtain possession of the coin immediately to satisfy depositors' claims.

(2-307) Regulation D (Questions and Answers): ELIGIBLE RESERVE ASSETS

2-307

Q2. May a depository institution sell its excess vault cash to another institution for use in satisfying reserve requirements by means of an overnight trust receipt? The selling institution will continue to hold the currency and coin in its vault.

A. No. Such transactions are regarded as a device to avoid reserve requirements and such temporary "sales" are not regarded as effective for reserve maintenance purposes.

(2-307.1) Regulation D (Questions and Answers): ELIGIBLE RESERVE ASSETS

2-307.1

Q3. Are redeemed savings bonds counted as vault cash?

A. No. Vault cash consists of United States currency and coin (except for coin and currency whose numismatic value exceeds face value, such as gold and silver coin) owned and held by the depository institution. However, redeemed savings bonds give rise to a "cash item in process of collection" deduction while in the collection process if shipped for collection on the next business day.

(2-307.2) Regulation D (Questions and Answers): ELIGIBLE RESERVE ASSETS

2-307.2

Q4. Coin and currency must be in the possession of the reporting institution, subject to the in-transit exception, in order to be treated as vault cash. Is currency and coin considered to be in an institution's possession if placed in a vault on the premises of another institution that is rented by the reporting institution?

A. Yes, so long as (1) the reporting institution has full rights of ownership of the coin and currency, (2) the reporting institution has full rights to obtain the coin and currency immediately in order to satisfy customer demands (and accordingly must be reasonably nearby), and (3) the institution from which the vault is rented does not include that coin and currency as its own vault cash.

(2-307.3) Regulation D (Questions and Answers): ELIGIBLE RESERVE ASSETS

2-307.3

Pass-Throughs

Q1. If a correspondent is assessed a penalty for a deficiency in reserves maintained that arose because a respondent depository institution was deficient, may the correspondent pass the penalty on to the respondent?

A. Yes. The Reserve Bank will impose the penalty on the correspondent and the correspondent is not prohibited by Federal Reserve rules from passing it on to the respondent, but is not required to.

(2-307.4) Regulation D (Questions and Answers): ELIGIBLE RESERVE ASSETS

2-307.4

Q2. Regulation D states that an institution may have only one pass-through correspondent. Does this rule apply to a foreign bank with offices in more than one state?

A. No. If a foreign bank has United States offices that are required to keep reserves at more than one Reserve Bank, each reporting unit is treated separately and may have a different pass-through correspondent.

(2-307.5) Regulation D (Questions and Answers): ELIGIBLE RESERVE ASSETS

2-307.5

Q3. May a former member bank that is required to maintain full reserves pass the reserves through a correspondent?

A. Yes. Such a bank may maintain its reserve account directly with the Reserve Bank or it may pass its reserves through a correspondent.

BALANCES DUE TO/DUE FROM DEPOSITORY INSTITUTIONS

(2-307.6) Regulation D (Questions and Answers): BALANCES DUE TO/DUE FROM DEPOSITORY INSTITUTIONS

2-307.6

BALANCES DUE TO/DUE FROM DEPOSITORY INSTITUTIONS

"Due From" Deductions

Q1. Are demand balances held by a depository institution with the Federal Home Loan Banks or with the NCUA Central Liquidity Facility to be reported in item 8, "Demand Balances Due from Depository Institution," on the F.R. 2900?

A. No. Such balances are not eligible for the "due from" deduction since neither the Federal Home Loan Banks nor the NCUA Central Liquidity Facility will hold required reserves on such balances.

(2-307.7) Regulation D (Questions and Answers): BALANCES DUE TO/DUE FROM DEPOSITORY INSTITUTIONS

2-307.7

Q2. Are "checking-type" accounts that a credit union maintains at a corporate central to be included as a deduction under item 8, "Demand Balances Due from Depository Institutions," on the F.R. 2900?

A. Only those accounts in the form of demand deposits (i.e., payable on demand) that are due from a corporate central are to be included as a deduction under item 8. If the corporate central reserves the right to require written notice before an intended withdrawal, regardless of whether or not the corporate central actually exercises this right and regardless of how the credit union uses the account, such accounts do not meet the definition of demand deposits and, therefore, may not be included in item 8.

(2-307.8) Regulation D (Questions and Answers): BALANCES DUE TO/DUE FROM DEPOSITORY INSTITUTIONS

2-307.8

Q3. Is a balance due from another depository institution subject to immediate availability which the state banking authorities count in satisfaction of an institution's state reserve requirements deductible as a balance due from other banks?

A. Yes. All balances at other depository institutions subject to immediate availability are deductible from gross transaction accounts in arriving at required reserves.

(2-307.9) Regulation D (Questions and Answers): BALANCES DUE TO/DUE FROM DEPOSITORY INSTITUTIONS

2-307.9

Q4. The actual balance in a reporting institution's demand account at another institution usually will be greater than the amount shown on the reporting institution's books in its due from entry. This occurs because the reporting institution will write down the due-from account on its books for checks and drafts that have not yet been paid by the institution holding the account. In reporting the total amount of balances due from depository institutions, must an institution report its book amount, or may it report the amount shown each day at the other institution as balances due to the reporting institution?

A. The reporting institution must use its book amount as balances due from depository institutions for purposes of item 8. The reporting institution will have written down a liability account for the check that it has issued, and, because that liability account is likely to be a reservable deposit account, it has already obtained a reduction in reserves on the transaction. To permit a deduction for that amount would permit an unwarranted double deduction for the amount of the check.

CLASSIFICATION AND RESERVABILITY QUESTIONS

(2-308) Regulation D (Questions and Answers): CLASSIFICATION AND RESERVABILITY QUESTIONS

2-308

CLASSIFICATION AND RESERVABILITY QUESTIONS

Q5. What is the proper treatment of excess reserves of a depository institution that maintains reserves on a pass-through basis?

A. As noted in the detailed reporting instructions, all reserve balances passed through to the Federal Reserve by a correspondent on behalf of a respondent must be excluded from item 8, "Demand Balances Due from Depository Institutions," of the respondent's F.R. 2900, even if a portion of the amount passed through on behalf of the respondent was in excess of the respondent's required reserves. On the other hand, a respondent may include as a due-from any demand balances that it has at a correspondent that were not passed through by a correspondent to the Federal Reserve.

(2-308.1) Regulation D (Questions and Answers): CLASSIFICATION AND RESERVABILITY QUESTIONS

2-308.1

Q6. An overdraft in an Edge corporation's demand deposit account at its parent bank is raised to zero for computing reserves and the amount is considered a loan from the parent to the Edge. Is the amount of the loan exempt from reserves?

A. The loan is not reservable to the parent bank. The Edge corporation is permitted to treat the loan as a borrowing from another depository institution (at page 21 of the instructions), and therefore it is not reservable.

(2-308.2) Regulation D (Questions and Answers): CLASSIFICATION AND RESERVABILITY QUESTIONS

2-308.2

Q7. Are excess reserves maintained with a pass-through correspondent in a deposit subject to immediate withdrawal a reservable liability of the correspondent?

A. If the entire amount on deposit with the correspondent is passed through to a Federal Reserve office, then none of it is to be treated as a balance due to banks. Any amount not actually passed through to a Federal Reserve office must be treated as a balance due to banks, and accordingly is reservable.

(2-308.3) Regulation D (Questions and Answers): CLASSIFICATION AND RESERVABILITY QUESTIONS

2-308.3

Q8. Are balances due to bankers' banks such as Savings Banks Trust Company and balances due to private banks to be reported in item 1.a. of the F.R. 2900?

A. Yes. Savings Banks Trust Company should be treated as a bank. Balances due to private banks that are not depository institutions are to be reported as bank demand accounts in item 1.a. Balances due from Savings Banks Trust Company, but not from private banks, are to be included in item 8.

(2-308.4) Regulation D (Questions and Answers): CLASSIFICATION AND RESERVABILITY QUESTIONS

2-308.4

Q9. What is the proper classification of funds received by a depository institution representing payments for loans that the institution is servicing for others?

A. Funds received by a depository institution in connection with servicing of loans for others represent deposits. Where the loan is owned by another depository institution, such funds represent a balance due to another depository institution until remitted. Loan repayments received by an institution for loans that it owns represent reductions in an asset account and do not give rise to reserves notwithstanding that such payments are carried temporarily in a liability account pending proper posting to the loan accounts.

(2-308.5) Regulation D (Questions and Answers): CLASSIFICATION AND RESERVABILITY QUESTIONS

2-308.5

Q10. What is the proper treatment of a check drawn by a depository institution on a zero balance account at a correspondent?

A. If a credit union, savings and loan association or other depository institution draws checks on a zero balance account at a correspondent bank and remits funds when advised that the checks have been presented, then the amount of the checks represent an amount due to another depository institution. Although Regulation D (12 CFR 204.2(b)(2)) provides that a check or draft drawn by a depository institution on another depository institution are not demand deposits, such rule applies only where the check or draft is drawn against a positive balance at another institution and would properly represent a reduction in an asset account. In the case of checks drawn on a zero balance account, a depository institution is regarded as having issued a reservable liability.

EUROCURRENCY LIABILITIES

(2-308.6) Regulation D (Questions and Answers): EUROCURRENCY LIABILITIES

2-308.6

EUROCURRENCY LIABILITIES

Q1. How are balances due to foreign offices of other depository institutions treated?

A. Borrowings from such offices are treated as nonpersonal time deposits and are reported on the Eurocurrency report form. Balances due to, and borrowings from, an institution's own foreign branches, whether or not subject to immediate withdrawal, are reported as Eurocurrency liabilities and are reservable net of balances due from those offices. Demand balances and borrowings due to foreign offices of affiliated banks are treated as balances and borrowings due to other banks.

(2-308.7) Regulation D (Questions and Answers): EUROCURRENCY LIABILITIES

2-308.7

Q2. If a foreign bank parent places funds with its United States branch in a capital account, is that account exempt from Eurocurrency reserves?

A. No. That must be treated as a balance due to parent. The capital equivalency deduction takes the place of capital for reserve requirement purposes.

(2-308.8) Regulation D (Questions and Answers): EUROCURRENCY LIABILITIES

2-308.8

Q3. There are two de minimis exceptions to the Eurocurrency reserve requirement on loans to United States residents, i.e., the $1 million per branch exception and the $100,000 per borrower exception. How do these exceptions interrelate?

A. Example one: If Mr. Jones, a U.S. resident, has a $50,000 loan at a bank's Nassau branch and a $90,000 loan at the bank's London branch and both branches have more than $1 million in loans outstanding to U.S. residents, then the resident exception does not apply since aggregate loans to Mr. Jones exceeds $100,000.

Example two: In example One, if the London branch had less than $1 million in loans to U.S. residents and the Nassau branch had more than $1 million, only the Nassau branch loans would be subject to reserve requirements. Reservable loans to Mr. Jones would be $50,000 since aggregate credit extended to him by the bank's foreign branches exceeds $100,000. The London branch loan to Mr. Jones is not reservable, however, because total loans to U.S. residents at that branch do not exceed $1 million.

Example three: If a bank's Nassau branch has 12 loans of $90,000 each to twelve different U.S. residents and no other foreign branch has any loans to any of the twelve U.S. residents, then the Nassau branch would have no reportable loans. The branch's total loans are more than $1 million, but its loan to any one U.S. resident is less than $100,000.

Example four: In example Three, if one of those U.S. residents had an additional loan at the London branch of $20,000, the Nassau branch must report $90,000 in loans. This is true regardless of whether London has more or less than $1 million in loans. If London has more than $1 million, it must report the $20,000 loan to the resident because in the aggregate the bank's loan to that resident totals more than $100,000.

(2-308.9) Regulation D (Questions and Answers): EUROCURRENCY LIABILITIES

2-308.9

Q4. Are direct borrowings from foreign corporations regarded as Eurocurrency liabilities?

A. Direct borrowings from foreign and domestic corporations that are not depository institutions are liabilities subject to reserve requirements but are not Eurocurrency liabilities. They are nonpersonal time deposits if their maturity is 14 days or more. They are demand deposits and reported as transaction accounts if their maturity is less than 14 days. The exemption for federal funds and Eurocurrency borrowings cover borrowings from banks and depository institutions.

(2-309) Regulation D (Questions and Answers): EUROCURRENCY LIABILITIES

2-309

Q5. If a foreign bank issues commercial paper in the United States and the bank's United States branch or agency borrows the proceeds from the bank's head office, are those funds subject to reserves at the domestic ratios?

A. No. Commercial paper issued in the United States by a foreign bank's head office is not subject to Federal reserve requirements. However, when the proceeds of the sale are channeled to the United States branch or agency, the proceeds become subject to Eurocurrency reserve requirements as an advance from the foreign bank's head office.

(2-309.1) Regulation D (Questions and Answers): EUROCURRENCY LIABILITIES

2-309.1

Q6. Are balances due from a Federal Reserve Bank to be subtracted from total assets in calculating a foreign bank's United States office's capital equivalency deduction?

A. No.

(2-309.2) Regulation D (Questions and Answers): EUROCURRENCY LIABILITIES

2-309.2

Q7. The calculation by foreign banks of their capital equivalency deduction requires that the definition of total assets correspond to the definition on their quarterly call report

(FFIEC 002). (However, the amount of total assets will, in many cases, need to be adjusted to take into account the different definitions of "related" institutions on the two reports.) In order to calculate total assets in Schedule A of that report, unearned income on loans is to be subtracted. Many foreign banks do not calculate unearned income on loans each day; rather they calculate it only monthly or quarterly. Must such foreign banks calculate this figure daily?

A. No. Foreign banks may use the most recently available figure on a consistent basis.

(2-309.3) Regulation D (Questions and Answers): EUROCURRENCY LIABILITIES

2-309.3

Q8. Eurocurrency liabilities include borrowings from "non-United States offices" of the reporting domestic institution. Do "non-United States offices" include foreign offices of a nonbank corporation that is an affiliate of the reporting institution?

A. No. "Non-United States offices" in this context means only foreign offices of the foreign bank operating the U.S. agency or branch. Affiliates are separate corporate entities, and their foreign offices are not foreign offices of the foreign bank itself. Borrowings from foreign offices of affiliated depository in stitutions are reported together with borrowings from other foreign depository institutions in column 1 of the F.R. 2950. Borrowings from foreign offices of affiliated nonbank corporations are treated as deposits and are subject to domestic reserve requirements as demand or time deposits depending on maturity; if the borrowing is a demand deposit (because the maturity is less than 14 days), then Regulation Q and part 329 of the FDIC's regulations prohibit the payment of interest on the borrowing.

(2-309.4) Regulation D (Questions and Answers): EUROCURRENCY LIABILITIES

2-309.4

Q9. A depository institution has separate demand accounts for each of several foreign branches of a single unrelated foreign bank. May amounts due to some of the branches be "netted" against amounts due from other branches for computing amounts due to banks?

A. No, unless the separate accounts of the foreign institution serve a bona fide cash management function and if netting is permitted under the law(s) of the country or countries in which the branches are located.

Regulation D (IBF Questions and Answers)Questions and Answers

About International Banking Facilities

Regulation D (IBF Questions and Answers)

ACCOUNTING

(2-309.41) Regulation D (IBF Questions and Answers): ACCOUNTING

2-309.41

ACCOUNTING

Q1. Regulation D (§ 204.8(f)) speaks in terms of "segregating" IBF accounts on an establishing entity's books. Must IBF accounts be placed in asset and liability accounts that are separate from the domestic business asset and liability accounts on the general ledger, or may the IBF accounts be intermingled with accounts on the domestic books?

A. IBF accounts must be kept as a separate set of accounts on a subsidiary ledger. Institutions may establish a separate general ledger for their IBF accounts if they so desire. This will facilitate the IBF's completion of reporting requirements and assist Federal Reserve examiners.

Q2. Must the total of IBF assets equal the total of IBF liabilities?

A. IBF assets, including claims on the establishing entity, must equal IBF liabilities, including claims by the establishing entity.

(2-309.42) Regulation D (IBF Questions and Answers): ACCOUNTING

2-309.42

Q3. Must the maturity of liabilities that are assumed by an IBF match the maturity of assets that are acquired?

A. Maturities of IBF assets need not match the maturities of IBF liabilities.

Q4. If an office of a bank has amounts due from its IBF in excess of the other net Eurocurrency liabilities, can that bank consider the excess due-from amount as an amount due from domestic banks and therefore a deduction against domestic transaction accounts?

A. No. Net amounts due from its IBF may only be applied against certain Eurocurrency liabilities.

(2-309.43) Regulation D (IBF Questions and Answers): ACCOUNTING

2-309.43

Q5. The total amount of IBF assets and IBF liabilities denominated in foreign currencies must be reported on the weekly report of International Banking Facility Accounts, FR 2072. Does this require the reporting of the U.S. dollar value of assets and liabilities held in foreign currencies?

A. Yes. Further, the dollar value of foreign currency denominated assets need not equal the dollar value of foreign currency denominated liabilities.

Q6. A deposit of a nonbank customer at a New York office matures and the funds are then placed in the IBF; is this a "shift" for the purpose of the FR 2076 and FR 2076S?

A. Yes. Deposits of existing customers which are transferred to the IBF books, prior to, or at maturity, are reported as a shift for the purposes of the FR 2076 and 2076S.

(2-309.44) Regulation D (IBF Questions and Answers): ACCOUNTING

2-309.44

Q7. If an institution maintains separate IBF revenue/expense or profit/loss accounts, how are these items reflected in the Federal Reserve IBF accounts?

A.

a. To the extent that accrued revenue and accrued expense items are clearly attributable to IBF loans and IBF liabilities, they may be designated as IBF assets and liabilities and will be reported respectively on lines 6, "other assets" and 10e, "other liabilities" on the FR 2072.

b. To the extent that accrued revenue and expense items have been posted directly to the IBF asset or IBF liability, they will be reported with the IBF asset or IBF liability on lines 1-5 or 9-10d of the report, as relevant.

c. The Federal Reserve does not require the separate calculation or reporting of IBF revenue received or expenses paid; however, if an institution calculates these items, they are reported for Federal Reserve purposes as part of the "due to/due from" establishing-entity figure.

ASSET TRANSFERS

(2-309.45) Regulation D (IBF Questions and Answers): ASSET TRANSFERS

2-309.45

ASSET TRANSFERS

Q1. A sale of an asset by a domestic office of a bank to its IBF is not subject to Eurocurrency reserve requirements if the transfer takes place during the four weeks immediately following establishment of an IBF. May such a transferred asset subsequently be transferred to an offshore office of the bank without being subject to Eurocurrency reserve requirements?

A. The intent of the four-week exemption period is to allow banks to place assets with their IBFs that could have been placed there at the inception of the asset. It is not intended to serve as a "sterilization" method whereby assets may be passed through an IBF on their way to an offshore office of the bank in order to avoid the reserve requirement on sales of assets to offshore offices. Institutions will be expected to use this exemption in good faith. The Federal Reserve expects that assets transferred to IBFs in the four-week period will remain there for an indefinite period. Assets that are transferred from the IBF to an offshore office within a few days of the transfer to the IBF will be looked upon with suspicion.

(2-309.46) Regulation D (IBF Questions and Answers): ASSET TRANSFERS

2-309.46

Q2. As to assets transferred to the IBF from a domestic office, is the amount of the asset transferred considered permanently free from the Eurocurrency reserve requirement?

A. No. There is no base amount of reserve-free transfers of assets. Only those particular assets that are transferred during the initial four-week period are exempt from Eurocurrency reserve requirements on sales of assets.

(2-309.47) Regulation D (IBF Questions and Answers): ASSET TRANSFERS

2-309.47

Q3. A bank transfers a $5 million loan to its IBF during the first four reserve computation periods following establishment of the IBF. This loan is a partial advance of a $30 million line of credit. During the four-week period the borrower draws down an additional $10 million; after the four-week period the borrower draws down the final $15 million. What notices must be given to the borrower? How much of the draw-down is a shift of assets which must be reported on the FR 2076, and FR 2076S?

A. Only the amount of the loan made prior to establishing the IBF may be transferred to the IBF without giving the notice and obtaining the acknowledgment, if required, in this example the $5 million. If the bank intends to book in its IBF any drawing of the $30 million line subsequent to the IBF's establishment, notice needs to be given and any required acknowledgment obtained. In the example, notice must be given and any required acknowledgment if the bank intends to book the additional $10 million in the IBF. However, notice need be given to and the relevant acknowledgment obtained from an IBF customer only one time. Only the amount drawn down prior to being booked as an IBF asset is a shift for report purposes, in the example, the $5 million.

(2-309.48) Regulation D (IBF Questions and Answers): ASSET TRANSFERS

2-309.48

Q4. Is an establishing entity required to create due-to and due-from accounting entries on its books when assets and liabilities are shifted to the IBF?

A. No. For weekly IBF reports and for reserve reporting purpose only, a balance is struck between IBF assets and IBF liabilities by supplying a figure which is reported as a "due to" or "due from" the United States office of the establishing entity; it is not necessary to create "due to/due from" accounting entries or contra accounts when designating and segregating certain assets or liabilities as IBF assets or liabilities on a subsidiary ledger of the institution. If, however, an institution establishes a separate general ledger for its IBF, accounting entities and contra accounts will be created on the IBF books and the establishing entity's books.

(2-309.49) Regulation D (IBF Questions and Answers): ASSET TRANSFERS

2-309.49

Q5. Can a branch of an Edge corporation in Miami transfer assets free of the Eurocurrency reserve requirement to the IBF of the New York branch of that Edge corporation?

A. No. The branch of an Edge corporation in Miami must first transfer assets to the New York branch of that Edge corporation which may then transfer those assets to its IBF. The transfer to the IBF by the New York branch is free of Eurocurrency reserves only if executed during the first four reserve computation periods after the New York branch establishes its IBF.

(2-309.5) Regulation D (IBF Questions and Answers): ASSET TRANSFERS

2-309.5

Q6. May assets or liabilities be transferred from the domestic or foreign books to the IBF only during the four reserve computation periods after establishment of the IBF? May assets or liabilities be transferred only one time?

A. There is no time limit for the transfer of assets or liabilities to the IBF books. However, assets transferred from the domestic books after the expiration of the four-week period subsequent to the establishment of the IBF are subject to Eurocurrency reserve requirements. No Eurocurrency requirements apply to the transfer of assets or liabilities from the foreign books to the IBF either within or without the four-week period. The notice requirements apply to transfers from foreign offices to the same extent that such requirements apply to transfers of assets and liabilities from the books of the domestic office. Assets or liabilities may be transferred to the IBF books more than once, however, the caveat in the answer to question 1 above should be kept in mind.

(2-309.51) Regulation D (IBF Questions and Answers): ASSET TRANSFERS

2-309.51

Q7. How is the period during which assets may be transferred on a reserve-free basis from the domestic books to the IBF determined, if an IBF is established after December 3, 1981?

A. The period for reserve-free transfers starts on the first day the IBF opens for business and ends on the last day of the fourth reserve computation period that ends after the establishment of the IBF. Thus, any IBF that opens during the period between December 3 and December 9, inclusive, would have its period for reserve-free asset transfers end on December 30, 1981.

DEPOSITS

(2-309.52) Regulation D (IBF Questions and Answers): DEPOSITS

2-309.52

DEPOSITS

Q1. IBF deposits are defined as deposits under Regulation Q. Does this mean that provisions of Regulation Q, such as the early withdrawal penalty and various grace periods, apply to IBF time deposits?

A. An institution may not permit early withdrawal of an IBF time deposit if that would mean that it is on deposit less than two days; however, early withdrawal may be permitted, with penalty, so long as funds will have been on deposit at least two days. Grace period provisions applicable to domestic time deposits do not apply to IBF time deposits.

Q2. A customer maintains $150,000 in an IBF time deposit and then withdraws $100,000. Can the IBF continue to hold the $50,000 deposit?

A. Yes. In addition, the deposit may be rolled over. However, a partial withdrawal of the remaining $50,000 is not permitted; the entire amount must be withdrawn and the account must be closed.

(2-309.53) Regulation D (IBF Questions and Answers): DEPOSITS

2-309.53

Q3. The answer to question 2 indicates that funds in the amount of less than $100,000, which can come about only if a withdrawal of $100,000 or more leaves less than $100,000 in the account, may be left on deposit at an IBF and rolled over. Are there any interest rate ceilings on such deposits, inasmuch as they amount to less than $100,000?

A. All IBF deposits, regardless of the amount at any given time, are exempt from interest rate ceilings. Section 217.7(a) of Regulation Q, as changed by the IBF amendments, makes this clear. Thus, amounts of less than $100,000 in IBF deposit accounts may carry any rate of interest agreed to by the bank and the customer.

Q4. May an IBF borrow from its establishing entity to make Eurodollar placements with other foreign banks or branches?

A. Yes. A borrowing from the establishing entity is a permissible IBF liability and a placement with a bank located outside the United States is a permissible IBF asset.

Q5. May an establishing entity transfer a domestic liability to its IBF simply because it funds a qualifying IBF asset which will be transferred to the IBF?

A. No. The domestic liability is not a permissible IBF liability.

(2-309.54) Regulation D (IBF Questions and Answers): DEPOSITS

2-309.54

Q6. Many customers would like to have a cash management arrangement between the United States books of their bank and the bank's IBF. Such an arrangement would allow the foreign customer to take funds from its demand account toward the end of the day and place the funds in a two-day time deposit at the IBF. May foreign customers have the bank make such transfers automatically?

A. Yes. There is no prohibition against the transfer of customer funds in either direction between the United States and IBF books of the bank. Funds may be transferred automatically from an IBF time deposit at maturity to a deposit account at a U.S. office of the bank, and funds may be transferred from an account at the U.S. office to the IBF. However, the deposit must qualify for treatment as an IBF deposit.

Q7. Is there any requirement as to the time of day during which an overnight borrowing or two-day borrowing is booked or renewed by an IBF?

A. No. The Federal Reserve does not have any general requirement concerning the time of day during which deposits or borrowings are booked or renewed so long as the procedure is consistent with the bank's general bookkeeping procedures on banking days.

(2-309.55) Regulation D (IBF Questions and Answers): DEPOSITS

2-309.55

Q8. Section 204.8(a)(2)(ii)(C) states that no deposit or withdrawal from an IBF time deposit issued to a nonbank customer of less than $100,000 is permitted.

a. Can withdrawals of interest earned on an IBF time deposit be less than $100,000?

b. Can withdrawals of less than $100,000 be made to make loan repayments to the issuing entity?

c. What action is required if the dollar value of foreign currency deposits drops below $100,000?

A.

a. Yes. Withdrawal of interest earned on an IBF account is not regarded as a withdrawal from the account and accordingly may be less than $100,000. This exception is made because otherwise IBF customers would likely be encouraged to limit deposits to the minimum maturity in order to withdraw interest.

b. No.

c. None. The amount of a deposit or withdrawal of foreign currency funds must have an exchange value of at least $100,000 at the time of the transaction. A depository institution is still in compliance with Regulations D and Q if the value of the deposit drops below $100,000 due to a change in exchange rates because no deposit or withdrawal of less than $100,000 has occurred.

(2-309.56) Regulation D (IBF Questions and Answers): DEPOSITS

2-309.56

Q9. May interest income from an IBF deposit be transferred to another account such as a brokerage account in the United States?

A. This depends on the circumstances of the particular case. The mere transfer of interest income to another account in the United States does not necessarily mean the deposit is not being used to support non-United States operations and may be permissible depending on the circumstances.

ELIGIBLE CUSTOMERS

(2-309.57) Regulation D (IBF Questions and Answers): ELIGIBLE CUSTOMERS

2-309.57

ELIGIBLE CUSTOMERS

Q1. In addition to the foreign-purpose requirement, section 204.8(a)(2)(ii) of Regulation D states that nonbank IBF time deposits may be issued only to non-United States residents. Is an individual who has a residence outside the United States and a residence in the United States a non-United States resident?

A. An individual who resides principally outside the United States at the time of the transaction is a non-United States resident.

Q2. May a United States parent of a borrower from an IBF guarantee a loan made by an IBF to the borrowing foreign subsidiary?

A. Yes. The guarantee by a United States parent would not destroy the qualification of an IBF asset which otherwise qualifies under section 204.8(a)(2).

(2-309.58) Regulation D (IBF Questions and Answers): ELIGIBLE CUSTOMERS

2-309.58

Q3. A United States company has a foreign subsidiary with no office overseas. The affairs of the foreign subsidiary are handled by a United States office of the parent. Is the foreign subsidiary an eligible IBF customer?

A. No. All foreigners, including foreign subsidiaries of United States corporations, must have an overseas office or branch (which may be a "nameplate" branch) in order to qualify as IBF customers. This is one of the important mechanisms whereby the Federal Reserve can ensure that as to nonbank customers only foreigners are using IBFs.

Q4. If a foreign company that is not affiliated with a United States company has an agent in the United States solely for the purpose of obtaining financing and processing the paperwork attendant thereto, may an IBF extend credit to the foreign company through such agent?

A. Because all of the operations of the company are overseas and the agent is here only to simplify the financing process, the use of a United States address does not prevent an otherwise eligible customer from using an IBF since the loan is actually made to a foreign resident who has no other connection with the United States.

(2-309.59) Regulation D (IBF Questions and Answers): ELIGIBLE CUSTOMERS

2-309.59

Q5. If an IBF's establishing institution is a member of a bank holding company, may the other subsidiaries of the holding company that do not have IBFs be customers of the IBF?

A. Only if they otherwise qualify as IBF customers.

Q6. In order to determine whether a customer must acknowledge in writing the rules governing IBF deposits and extensions of credit under sections 204.8(a)(2)(ii)(B) and (a)(3)(ii), what must IBFs do to determine whether a foreign company is controlled by a domestic corporation?

A. Only those corporations in which the parent owns more than 50 percent of the voting shares of the foreign company are covered.

(2-309.6) Regulation D (IBF Questions and Answers): ELIGIBLE CUSTOMERS

2-309.6

Q7. When an extension of credit is made, it qualifies as an IBF extension of credit, but a change in circumstances of the debtor that was not reasonably foreseeable at the time of the extension of credit causes the credit not to come within the criteria of an IBF extension of credit. For example, a loan might be made to the foreign office of a U.S. company for an eligible purpose, but during the life of the loan the company closes the foreign office. May the credit still be considered an IBF extension of credit?

A. Yes. In this case, the credit may still be considered an IBF extension of credit.

Q8. Is a loan to a U.S. borrower, fully guaranteed as to principal and interest by a foreign government, an IBF extension of credit?

A. No. The transaction will be regarded as a domestic extension of credit.

Q9. May an IBF accept deposits from a foreign office of an article XII investment company, a private bank, or a U.S. bank not subject to Federal Reserve reserve requirements?

A. Yes. The IBF will have to determine whether the depositor should be treated as a bank or as a nonbank entity.

(2-309.61) Regulation D (IBF Questions and Answers): ELIGIBLE CUSTOMERS

2-309.61

Q10. If a commercial bank (or a foreign bank) has a subsidiary Edge corporation in the United States with an IBF, may the United States offices of the bank (or U.S. branch or agency of the foreign bank) place deposits or take loans from the IBF of the Edge? Conversely, if the commercial bank (or U.S. branch or agency of a foreign bank) has the

IBF, may the United States offices of the Edge corporation place deposits with or take loans from the IBF of the bank?

A. The commercial bank (or U.S. branch or agency of a foreign bank) and the Edge corporation are different legal, establishing, and reporting entities. Accordingly, just as it may not take deposits from or make loans to United States offices of other banks, the IBF of the Edge may not take deposits from or make loans to the United States offices of the bank (or U.S. branches or agencies of a foreign bank) directly, but could transact business with the IBF of the bank. Conversely, the IBF of the bank (or U.S. branches and agencies of the foreign bank) could not take deposits from the United States branches of the Edge corporation directly, but could transact business with the IBF of the Edge corporation.

(2-309.62) Regulation D (IBF Questions and Answers): ELIGIBLE CUSTOMERS

2-309.62

Q11. A foreign bank has a branch in New York and an agency in California with an IBF. Can the New York branch have IBF time deposits with the California agency's IBF?

A. No. The branch in New York is a United States resident for the purpose of the IBF regulation and may not place funds with the IBF of the New York agency. However, the IBF of the branch in New York can place funds with the IBF of the California agency.

Q12. May the New York branch of an Edge corporation have a time deposit with the IBF of the Miami branch of that same Edge corporation?

A. No. The Edge corporation in New York is a United States resident for the purpose of the IBF regulation and may not place funds with the IBF of the New York agency. However, the IBF of the New York branch of the Edge corporation can place funds with the IBF of the Miami branch of the same Edge corporation.

(2-309.63) Regulation D (IBF Questions and Answers): ELIGIBLE CUSTOMERS

2-309.63

Q13. May an IBF of an agency outside of a foreign bank's home state obtain funds from any other IBF?

A. Yes, if otherwise consistent with the regulations of the agency's primary supervisor. The characterization of the taking of funds by the agency as an IBF time deposit under Regulations D and Q is not dispositive for the purposes of Regulation K, since "IBF time deposit" is defined broadly to include transactions that would otherwise be regarded as borrowings.

Q14. May trusts be IBF customers?

A. Yes. In the case of a trust, the trust need not be organized under foreign law, but all of the beneficiaries must be foreign residents. The notice statement may be sent to the trustee.

LOANS

(2-309.64) Regulation D (IBF Questions and Answers): LOANS

2-309.64

LOANS

Q1. May an IBF extension of credit be secured by a United States asset, such as the shares of a United States company or a mortgage on United States property; may an IBF purchase United States assets subject to the obligation to resell them at a later date?

A. Yes, if the underlying transaction is a qualifying one. In determining compliance with the definition of permissible IBF assets, the type of collateral is not necessarily a relevant consideration. The identity of the borrower and application of the loan proceeds are the relevant criteria. Likewise, because a repurchase agreement is essentially a secured borrowing in economic terms, the nature of the assets subject to resale by the IBF is also not determinative.

Q2. If an IBF extension of credit is secured by a mortgage on U.S. property or shares of a U.S. corporation, the obligor defaults on the loan, and the credit forecloses on the collateral, may such property or shares be held by the IBF?

A. Yes, consistent with prudent banking practice and other regulatory requirements.

(2-309.65) Regulation D (IBF Questions and Answers): LOANS

2-309.65

Q3. May an IBF issue a letter of credit with a United States beneficiary?

A. Yes, if the underlying transaction qualifies within the meaning of section 204.8(a)(2)--that is, the account party must be seeking a letter of credit for a transaction that would be a permissible loan transaction for an IBF. The drawing down of the letter of credit by means of a draft does not connect the arrangement to an impermissible transaction account. However, the IBF may not pay the draft by establishing a demand deposit account.

Q4. May an IBF engage in banker's acceptance financing?

A. Yes. An IBF may accept and discount a draft presented by its customers provided the draft is held to maturity. Such a transaction is booked as a loan for report of condition purposes. An institution's acceptance held in its own portfolio is treated as a loan, not an acceptance.

(2-309.66) Regulation D (IBF Questions and Answers): LOANS

2-309.66

Q5. May an IBF hold nonvoting preferred stock as an IBF extension of credit?

A. Yes, so long as the transaction complies with other requirements on IBF extensions of credit.

Q6. May an IBF maintain a clearing account at a non-United States office of a foreign bank?

A. An IBF may maintain a clearing account at non-United States offices of a foreign bank, at non-United States offices of the establishing entity, and at non-United States offices of other United States depository institutions and Edge or agreement corporations.

(2-309.67) Regulation D (IBF Questions and Answers): LOANS

2-309.67

Q7. May a loan extended without recourse to a foreign borrower but collateralized by a United States asset constitute an IBF-eligible loan?

A. In the normal course, these would not be eligible because they can be regarded as financing United States assets, but it is possible that some might be bona fide. An IBF interested in such a transaction should contact its local Federal Reserve Bank for further discussion if some legal reason compels it to structure a loan transaction in that way.

Q8. May IBFs maintain loan settlement accounts on the domestic books of United States offices of an affiliated bank or Edge corporation?

A. Yes. In a letter dated March 5, 1982 (at 2-335.11), the Board staff rendered an opinion that IBFs could have demand accounts on the domestic books of a bank or Edge corporation affiliated with the IBF's establishing entity, but only if (1) the account is to be used solely for loan settlement purposes and (2) the account is cleared on a daily basis so that there is a zero balance in the account at the end of each day. This exception to the general rule prohibiting the holding of demand accounts at United States offices of other banks comes about because an IBF would not have an extension of credit outstanding to a United States resident at the close of business each day. This exception is intended to make it operationally easier for IBFs to engage in transactions related to international loan syndications.

MISCELLANEOUS

(2-309.68) Regulation D (IBF Questions and Answers): MISCELLANEOUS

2-309.68

MISCELLANEOUS

Q1. May funds placed by an IBF with another bank's IBF be passed through by the second bank to a reserve account at a Federal Reserve Bank in order to count toward the first bank's reserve requirements?

A. No. There is no provision in the regulation for use of such funds as a pass-through account. A bank would have to book funds due to its IBF on its domestic books and pass the funds to its pass-through bank in order to use IBF funds to satisfy reserve requirements on a pass-through basis; the bank would be subject to Eurocurrency reserve requirements on that borrowing.

Q2. May an IBF's income and expense items be considered permissible asset or liability accounts?

A. For Federal Reserve purposes the accounts are not permissible IBF assets or liabilities. However, contra accounts that are required by accounting convention to accompany an entry for a permissible IBF asset or liability may be established. However, for state tax purposes these income and expense accounts may be permissible, or even required, on an IBF's books.

(2-309.69) Regulation D (IBF Questions and Answers): MISCELLANEOUS

2-309.69

Q3. Need a bank's IBF have a name different from that of the bank?

A. No. An IBF is neither a separate entity nor a branch. The Federal Reserve has no objection to use of a different name, but banks should ensure that use of such a name is unobjectionable to its chartering and licensing authority.

Q4. If a foreign bank (or an Edge corporation) has two branches in a single state and in a single Federal Reserve District, can each branch make IBF-eligible loans and receive IBF-eligible deposits?

A. Yes. Either or both branches of the foreign bank (or the Edge corporation) can conduct an IBF business. However, for Federal Reserve weekly IBF and reserve reporting pur poses, the two branches are a consolidated unit and are considered the establishing entity for one IBF. Therefore, the weekly IBF report must be filed on a consolidated basis by the same administrative office filing the FR 2900, and the FR 2951 (or the FR 2950, for an Edge corporation). In contrast, note that for the purposes of the FFIEC 002 and FR 2886B (which are, respectively, the quarterly call report for agencies and branches of foreign banks and Edge corporations), the two branches report separately and each therefore should include the IBF loans and deposits actually made and received at the branch on its quarterly call report.

SUPPORT OF FOREIGN OPERATIONS

(2-309.7) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.7

SUPPORT OF FOREIGN OPERATIONS

Q1. What is the duty of a depository institution if it discovers that an IBF time deposit or IBF loan is not in fact being used to support operations outside the United States?

A. A depository institution must keep reserves against IBF liabilities that do not meet the requirements of Regulations D and Q and, in addition, comply with interest-rate restrictions of Regulation Q. IBF assets which do not meet those requirements must be transferred from the IBF to the domestic books. An institution will be expected to communicate with its customers to determine that the requirements are understood and followed.

Q2. Does the requirement that an IBF time deposit "support operations outside the United States" require that the source of funds arise solely out of operations outside of the United States?

A. Not necessarily. For example, capital supplied by a United States parent to a foreign office or subsidiary may be deposited in an IBF if the purpose of the transaction was to support the non-United States operations of the company. Funds may not be deposited by a United States office to obtain indirectly the favorable regulatory treatment on an IBF deposit.

(2-309.71) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.71

Q3. Is a loan to a foreign corporation for the purpose of acquiring an existing United States corporation in a takeover bid considered to be for a foreign purpose?

A. No.

Q4. What documentation must a bank maintain to demonstrate that IBF loans and deposits are being used to support operations outside the United States?

A. Any internal memorandum or file documenting that notice has been sent, and in the case of non-United States subsidiaries or affiliates of United States residents, a copy of the acknowledgment should be retained. An IBF should maintain the same type of documentation concerning IBF loans as it routinely maintains with respect to other types of loans.

(2-309.72) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.72

Q5. With respect to IBF deposits, what restrictions does the "support of foreign operations" test impose on the IBF's establishing institution, IBF depositors, and payees of funds from a matured IBF deposit?

A. The support test for IBF deposits is intended to ensure that an IBF depositor places in IBFs only those funds that are used in connection with the depositor's (or its affiliates') foreign operations.

The Board is relying to a certain extent on banks' knowing their customers. As part of its general responsibilities to ensure that an IBF is in compliance with the Board's regulations, a bank is expected to take action if it comes to its attention in the normal course of business that a customer's use of its IBF account is inconsistent with the use-of-funds test. If it is unable to assure itself that the depositor is meeting the use-of-funds requirement, then the bank should consider moving the customer's account from its IBF to its domestic books or offshore.

A test does not impose restrictions on disbursal of the proceeds of a matured IBF deposit. It should be noted that the identity of the payee of the funds upon maturity is not conclusive on whether the depositor in fact is using those funds to support foreign operations. For example, the payee of a matured IBF deposit might be another United States depository institution or nonbank. That fact alone does not make the deposit ineligible at an IBF, it may be that the payment to the domestic party involved the depositor's foreign business. Also, the fact that the payee is a foreign entity does not by itself mean that the IBF deposit was permissible; it may be that the funds were used to support domestic operations even though they are paid to a foreign resident.

(2-309.73) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.73

Q6. If a bank discovers in the normal course of business that an account has not been used in accordance with the foreign operations test or any other provisions of the IBF regulations, must the bank reserve against the funds in the account?

A. Yes. If an account has not been used in accordance with the regulations, then the account must be treated as a domestic account, which means it is subject to domestic reserve requirements and to Regulation Q. Institutions must either bring the account into compliance or move it to the domestic or offshore books.

Q7. May an IBF depositor use an IBF deposit as security for a loan, the proceeds of which will be used for a domestic purpose?

A. No. Use of an IBF deposit in that manner would not constitute use of the funds solely to support foreign operations. However, IBF deposits against which a general right of set-off exists, either by law or contract, are not regarded as collateral or as assets securing a loan.

(2-309.74) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.74

Q8. Section 204.8(b) of Regulation D requires that nonbank customers of an IBF receive a written statement concerning use of an IBF only for foreign purposes. In the case of a syndicated loan to a nonbank borrower, must all the banks in the syndicate that choose to record the loan on the books of their IBF send such a statement to the borrower, or may only the agent bank in the syndicate do so?

A. Only the agent of a syndicate needs to send the written statement. If the borrower is an affiliate of a United States resident, the return statement need be sent by the borrower to the agent only; however, the members of the syndicate should obtain a copy of the borrower's letter for their records in order to ensure compliance with Regulation D.

Q9. When is the written notice and acknowledgment provided for in section 204.8(b) required to be given to a nonbank customer in connection with the opening of an IBF time deposit; in connection with establishing a nonbinding line of credit?

A. Section 204.8(b) states that a written notice must be given to an IBF customer at the time a deposit relationship or credit relationship is first established. A deposit relationship is established when a debtor/creditor relationship arises, and that occurs when funds are deposited to an account. Accordingly, the notice must be provided prior to that time. A credit relationship arises, not when the funds are disbursed, but when the commitment is made. Accordingly, the notice must be provided prior to the time that the funds are disbursed.

(2-309.75) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.75

Q10. The answer to question 9 above states that the written notice must be provided when the commitment to lend is made in connection with the establishing of a nonbinding line of credit. However, the commitment to lend is not made when the nonbinding line is first arranged, but at some later time when it is mutually agreed that the party wants to borrow and the bank is willing to lend. Must the notice be provided and acknowledgment obtained at the initial point when the nonbinding line is arranged, or at the later point when the parties became committed?

A. The notice must be provided and the acknowledgment obtained at the time the bank is committed to lend, not when a nonbinding line of credit is arranged. However, it is permissible to give notice to such customer and obtain the acknowledgment, if required, at the time the nonbinding line is arranged and such notice and acknowledgment will fulfill the notice and acknowledgment requirements for IBF loans to that customer.

Q11. Do the notice and acknowledgment requirements and limitations on the use of funds apply to foreign currency deposits and foreign currency loans?

A. Yes.

(2-309.76) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.76

Q12. Is the notice to IBF depositors required to be received by the depositor before an institution accepts funds to be placed in an IBF time deposit? For example, if a nonbank customer that has never received a notice of the Board's policy informs an institution by telephone that it intends to make a wire transfer of funds for placement in an IBF account that day, can the institution accept the funds, and then send the written notice out to the customer that same day? In the case of a foreign subsidiary or affiliate of a domestic corporation, must the institution receive the acknowledgment before it accepts the funds?

A. An institution may accept the wire transfer of funds for deposit to an IBF account prior to the receipt of the notice by the IBF customer and, when required, prior to the receipt of the acknowledgment, provided that the customer is notified orally or by wire of the support test and that the notice is sent with the confirmation of the transaction.

Q13. May a bank incorporate in its loan or deposit agreement the notice regarding the limitations on the use of IBF loan or deposit proceeds and, if required, the acknowledgment of those limitations and thereby satisfy its obligation to provide the notice to and receive the acknowledgment from IBF customers?

A. Yes.

(2-309.77) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.77

Q14. If the IBF customer is a foreign government, is written notice of the Board's policy regarding IBF deposits and loans necessary?

A. No. It is required only for non-United States residents, and foreign offices or subsidiaries of a domestic corporation.

Q15. The Board's letter of January 12, 1982 (at 2-263) states that IBFs may purchase securities in the secondary market so long as those securities are IBF-eligible. Is it permissible for an IBF to rely on a written statement from the obligor obtained by a prior IBF purchaser to the effect that that security was eligible?

A. Yes. An IBF may rely on such a statement from another IBF. However, the purchasing IBF must obtain a written copy of the obligor's statement at or very near to the time that it makes the purchase. This is necessary to provide assurance that IBFs are making correct eligibility determinations.

(2-309.78) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.78

Q16. In the notice announcing the addition of section 204.8 to Regulation D (46 Fed. Reg. 32426 (June 23, 1981)), footnote 2 of the supplemental information states that written notice need not be given to IBF customers associated with assets transferred to the IBF within the four-week exemption period. Does this also apply to deposits that are so transferred?

A. No. Only assets are covered by the exemption. If a deposit is transferred, the bank is necessarily required to contact the customer in order to determine whether the funds in the account will be used for foreign purposes. With respect to deposits transferred, only the written notice of the Board's policy must be given and the acknowledgment obtained, if required. No subsequent contact to determine the use of funds is required.

It may be necessary for a bank to contact loan customers in order to determine the purpose of the loan, but this is not required if the bank can determine the purpose from existing loan documentation. Although the "use of proceeds" test applies to loans transferred to the IBF from United States or non-United States offices of the establishing entity, notice to customers regarding the test is not required, provided that the loan was originally made prior to establishing the IBF. If the purpose of a loan is not clear from existing documentation, and the knowledgeable loan officer cannot provide sufficient clarification, then contact with the customer may be necessary to determine that loan proceeds are being used only to support operations outside the United States.

(2-309.79) Regulation D (IBF Questions and Answers): SUPPORT OF FOREIGN OPERATIONS

2-309.79

Q17. Can an institution transfer an existing deposit on its books to its IBF without giving the IBF notice requirements?

A. No, it is necessary to give the notice to, and obtain the acknowledgment, if required, from a customer at the time the deposit is shifted. Notice need be given to and the relevant acknowledgment obtained from an IBF customer only one time.

Regulation D (Rulings and Opinions)Board Rulings and Staff Opinions

Interpreting Regulation D

Regulation D (Rulings and Opinions)

Affected institutions

"Cash item in process of collection"

Computation and maintenance

"Deposit"

Deposits payable outside the United States

Eurocurrency liabilities

International banking facilities

IRA/Keogh

Nonpersonal time deposits

NOW account eligibility

Savings deposits

Time deposits

Transaction accounts

Transitional adjustments

"U.S. resident"

Vault cash

AFFECTED INSTITUTIONS--Building and Loan Association

(2-310) Regulation D (Rulings and Opinions): AFFECTED INSTITUTIONS -- Building and Loan Association

2-310

AFFECTED INSTITUTIONS--Building and Loan Association

A building and loan association chartered under a state law considering it to be a savings and loan association appears to be eligible to make application for federal deposit insurance even though it is open only one day a week. Section 103 of the Monetary Control Act defines a "depository institution" as any institution that is eligible to make application for federal deposit insurance. Therefore, such an association is subject to federal reserve requirements under Regulation D; however, Regulation D exempts smaller institutions from some (or all) reporting and reserve maintenance requirements. STAFF OP. of Nov. 3, 1980.

Authority: FRA § 19(b), 12 USC 461(b); National Housing Act § 403, 12 USC 1726; 12 CFR 204.1(c)(1)(V) and 561.1.

AFFECTED INSTITUTIONS--Nebraska Cooperative Credit Associations

(2-310.1) Regulation D (Rulings and Opinions): AFFECTED INSTITUTIONS -- Nebraska Cooperative Credit Associations

2-310.1

AFFECTED INSTITUTIONS--Nebraska Cooperative Credit Associations

Since the National Credit Union Administration has stated that Nebraska "cooperative credit associations" are not eligible to apply for federal deposit insurance even though they resemble credit unions, the associations are not depository institutions for purposes of Regulation D. Section 103 of the Monetary Control Act defines a "depository institution" as any institution that is eligible to make application for federal deposit insurance. STAFF OP. of Feb. 10, 1981.

Authority: FRA § 19(b), 12 USC 461(b); Federal Credit Union Act § 101, 12 USC 1752; 12 CFR 204.1(c).

AFFECTED INSTITUTIONS-- Institution Outside United States

(2-310.11) Regulation D (Rulings and Opinions): AFFECTED INSTITUTIONS -- Institution Outside United States

2-310.11

AFFECTED INSTITUTIONS-- Institution Outside United States

Regulation D does not apply to a depository institution located outside the United States; thus, such an institution is not required to report deposits to or maintain reserves with the Federal Reserve. STAFF OP. of July 17, 1981.

Authority: 12 CFR 204.1.

AFFECTED INSTITUTIONS--Member Deposits with Nonmember Institutions

(2-310.12) Regulation D (Rulings and Opinions): AFFECTED INSTITUTIONS -- Member Deposits with Nonmember Institutions

2-310.12

AFFECTED INSTITUTIONS--Member Deposits with Nonmember Institutions

Before the passage of the Monetary Control Act, a member bank could not deposit more than 10 percent of its capital and surplus in a nonmember depository institution. Section 105(e) of the Monetary Control Act amended section 19(e) of the Federal Reserve Act to provide that a member bank could not deposit more than 10 percent of its capital and surplus in any depository institution that is not authorized to have access to Federal Reserve advances under section 10(b) of the Federal Reserve Act (12 USC 347b). Section 103 of the Monetary Control Act amended the Federal Reserve Act to provide in section 19(b)(7) that "[a]ny depository institution in which transaction accounts or nonpersonal time deposits are held shall be entitled to the same discount and borrowing privileges as member banks." This provision is regarded as providing nonmember depository institutions that possess reservable transaction accounts and nonpersonal time deposits with access to the Federal Reserve discount window. Indeed, the sole purpose of the amendment to section 19(e) was to enable member banks to keep on deposit with nonmembers that have access to the Federal Reserve's discount window any amount so desired. Consequently, a member bank may maintain more than 10 percent of its capital and surplus in a nonmember institution that has reservable transaction accounts or nonpersonal time deposits. STAFF OP. of Aug. 6, 1981.

Authority: FRA §§ 19(b)(7) and 19(e), 12 USC 461(b)(7) and 463.

AFFECTED INSTITUTIONS-- Cooperative Insurance Corporation

(2-310.13) Regulation D (Rulings and Opinions): AFFECTED INSTITUTIONS -- Cooperative Insurance Corporation

2-310.13

AFFECTED INSTITUTIONS-- Cooperative Insurance Corporation

A credit union, operated as a cooperative insurance corporation under state law, that insures state-chartered credit unions is exempt from reporting and maintenance requirements of Regulation D because it is ineligible to apply for federal insurance. If a credit union of such standing acquires federal share insurance, it must comply with the reporting and maintenance requirements of Regulation D. STAFF OP. of Dec. 22, 1981.

Authority: FRA § 19(b)(1)(A)(iv), 12 USC 461(b)(1)(A)(iv); 12 CFR 204.1(c)(iii).

AFFECTED INSTITUTIONS--Rhode Island Loan and Investment Banks

(2-310.14) Regulation D (Rulings and Opinions): AFFECTED INSTITUTIONS -- Rhode Island Loan and Investment Banks

2-310.14

AFFECTED INSTITUTIONS--Rhode Island Loan and Investment Banks

In 1981, the Rhode Island legislature amended its law to classify loan and investment companies chartered under Rhode Island law as loan and investment banks. As a result, the FDIC has concluded that a loan and investment bank in Rhode Island is eligible to apply to the FDIC to become an insured bank under section 5 of the Federal Deposit Insurance Act. Section 103(b)(1)(A)(i) of the Monetary Control Act of 1980 defines "depository institution" to mean a bank that is eligible to apply to become an insured bank under section 5 of the Federal Deposit Insurance Act. Section 103(b)(2) of the Monetary Control Act requires every depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits in accordance with the Board's regulations. Since the FDIC now regards loan and investment banks in Rhode Island as eligible to apply for federal deposit insurance, such institutions are depository institutions under the Monetary Control Act and are now required to file reports and maintain reserves in accordance with the Monetary Control Act and Regulation D. STAFF OP. of Jan. 18, 1982.

Authority: Monetary Control Act § 103(b)(2) and (b)(1)(A)(i), 12 USC 461(b)(2) and (b)(1)(A)(i); FDIA § 5, 12 USC 1815; 12 CFR 204.

"CASH ITEMS IN PROCESS OF COLLECTION"--Instruments Presented by Payable-Through Banks

(2-315) Regulation D (Rulings and Opinions): "CASH ITEMS IN PROCESS OF COLLECTION" -- Instruments Presented by Payable-Through Banks

2-315

"CASH ITEMS IN PROCESS OF COLLECTION"--Instruments Presented by Payable-Through Banks

Payment instruments that are similar to traveler's checks and are presented for payment by one or several payable-through banks, rather than being presented directly to the issuers for payment, qualify for treatment as cash items in process of collection for purposes of Regulation D. STAFF OP. of Sept. 25, 1980.

Authority: 12 CFR 204.2(i)(1)(iii) and 210.2(i).

"CASH ITEMS IN PROCESS OF COLLECTION"--Items on Hand vs. Immediately Payable Items

(2-315.1) Regulation D (Rulings and Opinions): "CASH ITEMS IN PROCESS OF COLLECTION" -- Items on Hand vs. Immediately Payable Items

2-315.1

"CASH ITEMS IN PROCESS OF COLLECTION"--Items on Hand vs. Immediately Payable Items

The question was raised whether items in the process of collection pursuant to section 204.2(i)(1)(iii) of Regulation D qualify for the cash items in the process of collection (CIPC) deduction in the same manner that items defined under section 204.2(i)(1)(i) qualify. Under clause (i), a check on hand that will be presented for payment or forwarded for collection on the next following business day by the depository institution is considered to be in the process of collection. Clause (iii) does not contain an elaboration of the concept of "in the process of collection." However, in its opinion at 2-307.1, in which it said that savings bonds cannot be counted as vault cash, the staff stated that "[R]edeemed savings bonds give rise to a `cash item in process of collection' deduction while in the collection process if shipped for collection on the next business day."

The staff believes that the concept of in the process of collection, as articulated in section 204.2(i)(1)(i), includes items that will be presented for payment or forwarded for collection on the following business day and also applies to items described in clause (iii). Treating these items as in the process of collection is permitted only if they are being redeemed.

Checks or items specified in clause (iii) that are on hand and that will be presented for payment or forwarded for collection on the following business day may be treated as

CIPC, regardless of when the depository institution actually receives funds for those items. Such items qualify as CIPC regardless of the fact that the presenting or forwarding bank may receive deferred credit for the items. However, the CIPC deduction is not available until the depository institution books the item as a deposit. STAFF OP. of Sept. 3, 1986.

Authority: 12 CFR 204.2(i)(1)(i) and (iii).

COMPUTATION AND MAINTENANCE--Reports

(2-320) Regulation D (Rulings and Opinions): COMPUTATION AND MAINTENANCE -- Reports

2-320

COMPUTATION AND MAINTENANCE--Reports

Under Regulation D, depository institutions are required to submit information regarding time deposits on Form FR 2900. If an institution posts its general ledger daily or generates a daily balance sheet, then all amounts reported for reserve requirement purposes on the FR 2900 are required to be updated daily. Weekly updating of balances is permissible only if it is the accepted accounting standard and practice for a particular segment of the industry to post the general ledger less frequently than daily. STAFF OP. of Jan. 9, 1981.

Authority: 12 CFR 204.3.

COMPUTATION AND MAINTENANCE--Cash Management Plans

(2-320.1) Regulation D (Rulings and Opinions): COMPUTATION AND MAINTENANCE -- Cash Management Plans

2-320.1

COMPUTATION AND MAINTENANCE--Cash Management Plans

A cash management plan can be regarded as bona fide when an institution and a depositor have agreed that the institution may use the balance in one account to offset the overdrafts in another account of the same or a related depositor, even though such an agreement is not incorporated in writing, and where some bona fide cash management purpose is served. While a written agreement is not required, there should be some indicia of this purpose that can be referred to in order to demonstrate the bona fide nature of the arrangement. Staff does not believe that a bona fide cash management purpose is served when an institution nets a depositor's multiple accounts after an overdraft occurs in one of those accounts merely to reduce its net transactions accounts. Of course, it should be recognized that, depending on the nature and extent of any cash management plan, sound banking practice may require that the institution's authority and responsibility be documented. This is especially true when overdrafts occur through a prearranged credit authorization and are not covered by positive balances on hand. STAFF OP. of April 1, 1981.

Authority: 12 CFR 204.3(e).

See also "Preparation of the Report of Transaction Accounts, Other Deposits and Vault Cash" (FR 2900).

COMPUTATION AND MAINTENANCE--Instruments Drawn Against Correspondent Bank

(2-320.11) Regulation D (Rulings and Opinions): COMPUTATION AND MAINTENANCE -- Instruments Drawn Against Correspondent Bank

2-320.11

COMPUTATION AND MAINTENANCE--Instruments Drawn Against Correspondent Bank

A question has arisen regarding the applicability of Regulation D to instruments issued by savings and loan associations but drawn against a servicing bank. The payment instruments serve purposes similar to officers' or cashiers' checks, but they are drawn on a bank other than the selling institution, which remits proceeds of the sales periodically to the drawee bank. Depository institutions have been advised that when an institution issues checks or drafts drawn on an account at a correspondent bank and remits funds either periodically or when advised that the checks have been presented, the amount of the checks represent an amount due to another depository institution (see 2-306.7). Although section 204.2(b)(2) of Regulation D provides that a check or draft drawn by a depository institution on another depository institution is not a demand deposit of the drawer, that rule applies only when the check or draft is drawn against a positive balance at another institution, since such a draft would properly represent a reduction in an asset account. However, in arrangements such as that described, a depository institution is regarded as having issued a reservable liability until it reimburses its correspondent.

The Board's Instructions for Preparation of the Report of Transaction Accounts, Other Deposits and Vault Cash (Reporting Form FR 2900) for savings and loan associations requires that the amount of such outstanding instruments be reported in item 3, Other Demand Deposits. STAFF OP. of Dec. 2, 1981.

Authority: 12 CFR 204.2(b)(2).

COMPUTATION AND MAINTENANCE--Vault Cash and Reserve Balances

(2-320.12) Regulation D (Rulings and Opinions): COMPUTATION AND MAINTENANCE -- Vault Cash and Reserve Balances

2-320.12

COMPUTATION AND MAINTENANCE--Vault Cash and Reserve Balances

Carryover deficiencies of reserves in a depository institution cannot be met by the use of excess vault cash. Section 204.3(c) and (h) of Regulation D reveal the Board's intent to distinguish between vault cash and reserve balances maintained by the institution at the Reserve Bank. In addition, vault cash does not constitute a reserve balance within the meaning of Regulation D, and the 2 percent carry over provision does not apply to excess vault cash.

Such use of vault cash could have adverse effects on the estimation of monetary aggregates because of the need for recalculation of required reserve balances. STAFF OP. of Dec. 22, 1981.

Authority: 12 CFR 204.3(b), (c), and (h).

COMPUTATION AND MAINTENANCE--Pass-Through Correspondent

(2-320.13) Regulation D (Rulings and Opinions): COMPUTATION AND MAINTENANCE -- Pass-Through Correspondent

2-320.13

COMPUTATION AND MAINTENANCE--Pass-Through Correspondent

Two reserve maintenance options exist for a correspondent passing through required reserve balances of respondents whose main offices are located in the same Federal Reserve territory as its own main office. A correspondent may maintain such balances, along with its own required reserve balances, in a single commingled account at the Federal Reserve Bank office in the territory where its main office is located, or it may maintain in a separate commingled account the required reserve balances passed through for respondents whose main offices are located in the same Federal Reserve territory as the correspondent's main office.

The question was raised whether a pass-through correspondent for other institutions may pass its own reserve balances through another correspondent. The limitations in Regulation D concerning the maintenance of pass-through accounts were intended primarily to prevent tiering of reserve accounts (the passing of reserve balances through multiple levels of correspondents). The arrangement in question does not result in the tiering of reserve balances, since the correspondent maintains the reserve balance of its respondents directly with the Reserve Bank; therefore, the correspondent may pass its own required reserve balances through another correspondent. STAFF OP. of June 24, 1983.

Authority: 12 CFR 204.3(i)(3).

COMPUTATION AND MAINTENANCE--Interbank Borrowing and Low Reserve Tranches

(2-320.14) Regulation D (Rulings and Opinions): COMPUTATION AND MAINTENANCE -- Interbank Borrowing and Low Reserve Tranches

2-320.14

COMPUTATION AND MAINTENANCE--Interbank Borrowing and Low Reserve Tranches

A bank holding company established an interbank funds-management arrangement for its subsidiary banks under which banks with net transaction-account balances in excess of $41.5 million, which is currently the cutoff for the low reserve tranche, "transferred" funds in excess of that amount to affiliate banks with net transaction account balances of less than $41.5 million. The transfers were accomplished through federal-funds sales to the smaller institutions. The large banks received compensation for funds transferred to the smaller banks at what the holding company determined was the market rate of interest paid by the smaller banks on the funds received. The transferring banks then treated the amounts due from the transferee banks as balances subject to immediate withdrawal due from other depository institutions and deducted them from their gross transaction accounts. The purpose of these transactions was to reduce the overall reserve requirements for the holding company's subsidiary banks.

This arrangement amounts to evasion of reserve requirements, and, depending on the form of the transactions, compensation provided under the arrangement may violate the prohibition against payment of interest on demand deposits.

In 1989, depository institutions had to maintain 3 percent reserves on their net transaction accounts up to $41.5 million (the low reserve tranche) and 12 percent reserves on amounts in excess of $41.5 million. The cutoff level is increased annually by 80 percent of the annual percentage increase in aggregate net transaction accounts for all depository institutions.

A depository institution may deduct cash items in process of collection and "balances subject to immediate withdrawal due from other depository institutions" from its gross transaction accounts when computing reserves on net transaction accounts (§ 204.3(f)(1)). Under the instructions for item B.1 of Form FR 2900 (Report of Transaction Accounts, Other Deposits and Vault Cash), the due-from deduction includes all balances that are booked in the form of deposits, are subject to immediate withdrawal, and are due from other depository institutions. The due-from deduction is intended, in part, to prevent double reserving of deposits. The institution having the use of the funds is maintaining transaction-account reserves on them (because they are deposits immediately due on demand); so the institution lending them is excused from doing so.

The instructions for Form FR 2900 explicitly direct the reporting institution to exclude primary obligations not booked as deposits when calculating the amount due from other institutions. For example, section 204.2(a)(1)(vii) excludes certain primary obligations of a depository institution that are not booked as deposits, such as federal-funds transfers (i.e., obligations issued or undertaken and held for the account of an office of another depository institution), from the definition of "deposit." Thus, a depository institution cannot deduct federal funds "sold" to (and therefore due from) another institution from its gross transaction accounts when computing reserves under section 204.3(f)(1).

The transfers between the larger banks and smaller banks in this case may not be treated as federal-funds transactions if the due-from deduction is to be taken. If these transfers were booked as deposits and subject to immediate withdrawal, they would meet the literal requirements for the deduction; however, this practice amounts to an evasion of reserve requirements. The purpose of the low reserve tranche is to lessen the burden on smaller depository institutions of offering demand deposits and interest-bearing checking accounts; this practice allows larger institutions to enjoy a benefit Congress intended for smaller ones. It also understates the amount of transaction accounts subject to 12 percent reserves and results in a lower reserve base than anticipated.

Finally, if these transactions are booked by a transferee member bank as deposits subject to immediate withdrawal, payments of compensation for the balances would violate the prohibition against the payment of interest on demand deposits. Consequently, if the due-from deduction is used, charging the smaller banks for use of the transferred funds is a violation of this prohibition because that deduction is available only if the funds are booked as deposits and are payable immediately upon demand. If liabilities booked as term deposits were used, (i.e., if they were not subject to immediate withdrawal), the due-from deduction could not be used, although interest could be paid.

Because this shift of funds serves no business purpose other than reserve avoidance, the Reserve Bank could use its discretion in determining whether to assess reserve-deficiency penalties for past practices. Future practices, however, probably should be subject to appropriate penalties. STAFF OP. of Oct. 10, 1989.

Authority: 12 CFR 204.3(a), 204.7, and 204.9(a).

"DEPOSIT"--Interbank Borrowing

(2-324) Regulation D (Rulings and Opinions): "DEPOSIT" -- Interbank Borrowing

2-324

"DEPOSIT"--Interbank Borrowing

A bank's liability to another bank may be classified as "other borrowings" rather than "deposits" for the purposes of Regulation D, unless such liabilities are recognized by the parties as "deposits." STAFF OP. of Oct. 15, 1969.

Authority: 12 CFR 204.2(a)(1)(vii).

"DEPOSIT"--Participations and Repurchase Agreements*

(2-324.1) Regulation D (Rulings and Opinions): "DEPOSIT" -- Participations and Repurchase Agreements*

2-324.1

"DEPOSIT"--Participations and Repurchase Agreements*

A participation in a pool of assets does not constitute a deposit as long as the purchaser relies on the underlying assets within the pool for payments of interest and principal. However, if the bank has the primary legal obligation to pay either the interest or principal out of its own funds, the participation is a deposit. A participation is usually a deposit liability if the purchaser, by having placed funds with the bank either for a specified time or for an indefinite time to be determined by the purchaser, has the right to require the bank to repurchase the participation. The bank's obligation to repay the customer a sum certain at the maturity date is the type of obligation contemplated by the terms "promissory note" and "acknowledgment of advance," which are included in the definition of "deposit." If the bank's reservation of the right to repurchase serves the same binding function and is being so used, Regulation D would apply. STAFF OP. of May 27, 1971.

Authority: 12 CFR 204.2(a)(1)(vii).

"DEPOSIT"--Obligations of Bank Acting as Trustee

(2-324.2) Regulation D (Rulings and Opinions): "DEPOSIT" -- Obligations of Bank Acting as Trustee

2-324.2

"DEPOSIT"--Obligations of Bank Acting as Trustee *

The term "federal funds" is used generally to refer to obligations of a member bank that are exempt from Regulation D reserve requirements. Such obligations are exempt if issued to or undertaken with respect to, and held for the account of, a bank or a domestic banking office of a bank. A member bank may not purchase federal funds from a trust company engaged solely in trust business, since the obligation would not be held for the account of a bank or domestic banking office of another bank. Rather, the obligation would be held for the beneficiaries of the trust accounts, who are generally individuals and corporations. Accordingly, obligations of a member bank issued to a second bank are not exempt from reserve requirements if the second bank is acting as a trustee for various trust accounts and the funds used represent funds of these trust accounts. STAFF OP. of Feb 17, 1976.

Authority: 12 CFR 204.2(a)(1)(vii).

"DEPOSIT"--Mortgage-Backed Securities*

(2-324.3) Regulation D (Rulings and Opinions): "DEPOSIT" -- Mortgage-Backed Securities*

2-324.3

"DEPOSIT"--Mortgage-Backed Securities*

Mortgage-backed securities do not give rise to a deposit liability if a bank's exposure to loss is limited to no more than 10 percent of a pool of high-quality, conventional, one- to four-family mortgages and the bank maintains an adequate reserve for losses. A bank's commitment to advance funds, which is intended to maintain a regular flow of scheduled payments to certificate holders rather than to insure against losses, does not entail a greater risk of loss than is permissible. In order to give investors an explicit understanding of a bank's liability associated with the securities, the certificate should prominently disclose (1) that the securities are not liabilities of, nor guaranteed by, the bank or a subsidiary mortgage service company; (2) that the securities are not deposits and are not insured by the FDIC or any government agency; and (3) that the bank's liability for the full timely payment of interest and principal is limited by the terms of the agreement to advance funds, which terms should be clearly set forth. STAFF OP. of Dec. 4, 1979.

Authority: 12 CFR 204.2(a)(1)(ix).

"DEPOSIT"--Conditional Liability of Indorser*

(2-324.4) Regulation D (Rulings and Opinions): "DEPOSIT" -- Conditional Liability of Indorser*

2-324.4

"DEPOSIT"--Conditional Liability of Indorser*

A depository institution proposes to enter into an arrangement in which an underwriter will either purchase industrial development revenue bonds in the depository institution's possession and sell them to third parties as underwriter or market the bonds as agent of the institution. The selling institution will also arrange for an insurance policy for the bonds sold which provides that the insurance company will guarantee, in full, payment of principal and interest to the purchasers; the depository institution will pay the policy premium and will indemnify the insurance company for any payments made under the policy. The purchasers will be unaware of the fact that the bonds were previously part of the depository institution's portfolio and will not have rights against the depository institution if the insurer does not make the necessary payments. The nature of this transaction is substantially identical to that of an indorser or guarantor and, thus, is a conditional liability that need not be classified as a deposit for purposes of Regulations D and Q. STAFF OP. of Oct. 28, 1980.

Authority 12 CFR 204.2(a)(2)(ii).

"DEPOSIT"--Exemption for Dollar Exchange Acceptances

(2-325) Regulation D (Rulings and Opinions): "DEPOSIT" -- Exemption for Dollar Exchange Acceptances

2-325

"DEPOSIT"--Exemption for Dollar Exchange Acceptances

The exemption from reserve requirements for eligible acceptances under section 204.2(a)(1)(vii)(E) of Regulation D also should be regarded as applicable to dollar exchange acceptances described in paragraph 12 of section 13 of the Federal Reserve Act. STAFF OP. of Jan. 15, 1981.

Authority: FRA § 13 ¶¶ 7 and 13, 12 USC 372; 12 CFR 204.2(a)(1)(vii)(E) and 204.1(f).

"DEPOSIT"--Repurchase Agreements

(2-325.01) Regulation D (Rulings and Opinions): "DEPOSIT" -- Repurchase Agreements

2-325.01

"DEPOSIT"--Repurchase Agreements *

Under section 204.2(a)(1) of Regulation D, an obligation issued by a member bank that evidences an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase, is in certain cases excluded from the definition of "deposit." Such obligations (usually called repurchase agreements, or RPs) are not deposits. Therefore, RPs meeting these criteria are not subject to the provisions of Regulation D.

The phrase "direct obligations of . . . the United States or any agency thereof" does not mean that a liability issued by a member bank under an RP must run "directly" from the United States to the bank's customer. When a bank transfers assets to its customers in connection with an RP, each such transfer evidences an indebtedness arising out of the transfer of an obligation running directly from the United States to the bank. In other words, the "direct obligation" language refers to the obligation underlying the RP, running from the United States to the bank, and not to the liabilities the bank subsequently creates, running from the bank to its customers. Of course, an RP also may be based on obligations "fully guaranteed as to principal and interest by the United States. . . ." STAFF OP. of June 26, 1981.

Authority: 12 CFR 204.2(a)(1)(vii)(B).

"DEPOSIT"--Note Issued by Nonbank Affiliate

(2-325.1) Regulation D (Rulings and Opinions): "DEPOSIT" -- Note Issued by Nonbank Affiliate

2-325.1

"DEPOSIT"--Note Issued by Nonbank Affiliate

When proceeds from a promissory note issued by the nonbank affiliate of the commercial bank are used by the affiliate to repay its outstanding loan with the bank, those funds are not regarded as funds being supplied by the affiliate to the bank for the purpose of being used in the banking business (i.e., lending and investment activities) or to maintain the availability of such funds for that purpose. Thus, these proceeds would not be regarded as deposits under section 204.2(a)(1)(v) of Regulation D.

It should be noted that, if the liability to the affiliate arose in connection with a sale of assets by the bank to the affiliate, the issuance of an obligation by the affiliate and the sale of assets would be viewed as a single transaction. In such a situation, the obligation issued by the affiliate would be regarded as a deposit. No opinion is expressed with regard to the applicability of section 23A of the Federal Reserve Act (12 USC 371c) to the advances made by the bank to its nonbank affiliate. STAFF OP. of June 26, 1981.

Authority: 12 CFR 204.2(a)(1)(v) and 204.3.

"DEPOSIT"--Banker's Acceptances

(2-325.11) Regulation D (Rulings and Opinions): "DEPOSIT" -- Banker's Acceptances

2-325.11

"DEPOSIT"--Banker's Acceptances

Banker's acceptances issued to finance domestic storage of diesel engines and parts do not meet specifications regarding eligibility for discounts by Federal Reserve Banks. The creation, discount, and sale of such acceptances would produce an obligation that would be a deposit for purposes of the reserve requirement of Regulation D. STAFF OP. of Dec. 18, 1981.

Authority: FRA § 13 ¶ 7, 12 USC 372; 12 CFR 204.2(a)(1)(vii)(E).

"DEPOSIT"--Banker's Acceptances

(2-325.12) Regulation D (Rulings and Opinions): "DEPOSIT" -- Banker's Acceptances

2-325.12

"DEPOSIT"--Banker's Acceptances

A U.S. bank proposed that its foreign branch aggregate individual banker's-acceptance transactions and issue a draft in its own name on behalf of the foreign branch's customers. The draft would be accepted and discounted by the U.S. bank. The fact that the U.S. bank and the foreign branch are part of the same entity does not change the economic reality of the transaction. In addition, the character of the underlying acceptances aggregated by the foreign branch involving the importation or exportation of goods should carry through to the acceptance issued by the U.S. bank. STAFF OP. of Jan. 27, 1983.

Authority: FRA § 13 ¶ 7, 12 USC 372; 12 CFR 204.2(a)(1)(vii).

"DEPOSIT"--Overnight Loan by Holding Company to Bank Subsidiary

(2-325.13) Regulation D (Rulings and Opinions): "DEPOSIT" -- Overnight Loan by Holding Company to Bank Subsidiary

2-325.13

"DEPOSIT"--Overnight Loan by Holding Company to Bank Subsidiary

Overnight unsecured loans by a bank holding company to its subsidiary banks to help the banks adjust their reserve positions are deposits under Regulation D. Included within the definition of "deposit" is "any liability of a depository institution on any promissory note, acknowledgment of advance, banker's acceptance, or similar obligation (written or oral), including mortgage-backed bonds, that is issued or undertaken by a depository institution as a means of obtaining funds." The Board also regards funds supplied from nondepository affiliates to depository institutions, even if not in the form of a direct obligation, as deposits. Accordingly, overnight loans by a bank holding company to its bank subsidiary are deposits and, given their maturity of less than 14 days, subject to transaction-account reserve requirements. STAFF OP. of May 4, 1983.

Authority: 12 CFR 204.2(a)(1)(vii).

"DEPOSIT"--Sale of Assets Guaranteed by Bank

(2-325.14) Regulation D (Rulings and Opinions): "DEPOSIT" -- Sale of Assets Guaranteed by Bank

2-325.14

"DEPOSIT"--Sale of Assets Guaranteed by Bank

The question has arisen whether certain tax-exempt bonds sold by a member bank and held in its investment and loan portfolio are reservable deposits when the assets are guaranteed in some manner by the bank. The bank proposes in some of these sale transactions to issue a letter of credit that the purchaser may draw upon if the bond issuer defaults. In certain other cases, the bank proposes to sell the bonds subject to a put option that would permit the purchaser to put the bond back to the bank at a stated price on a specified date or dates.

Assets sold by a member bank subject to such a standby letter of credit or put option are regarded as deposits under Regulation D. The amount of reserves that must be held will depend on the maturity of the bank's obligation to provide funds to the holder of the put option or standby letter of credit, not on the maturity of the assets sold. In the case of an asset sold subject to a put option exercisable on a specific date or after a period of notice, the original maturity is measured by the exercise date of the option or length of the notice period. If there are several dates on which the option may be exercised, the original maturity is based on the first exercise date, and subsequent maturities are based on the length of time between options. In the case of a standby letter of credit that can be drawn on immediately upon default, the purchaser may, in effect, collect upon demand. Thus, the transaction would be a demand deposit. However, if the purchaser must give at least 14 days' notice before drawing on the letter of credit, the obligation would be reservable as a time deposit. STAFF OP. of June 23, 1983.

Authority: 12 CFR 204.2(a)(1)(vii).

"DEPOSIT"--Banker's Acceptances

(2-325.15) Regulation D (Rulings and Opinions): "DEPOSIT" -- Banker's Acceptances

2-325.15

"DEPOSIT"--Banker's Acceptances

A domestic bank proposes to create a banker's acceptance on behalf of a U.S. branch or agency of a foreign bank that would cover a trade transaction involving the shipment of goods from one foreign country to another. Reserve requirements do not apply to banker's acceptances of the type described in section 13, paragraph 7 of the Federal Reserve Act, which includes as eligible those banker's acceptances that "grow out of transactions involving the importation or exportation of goods" and have a maturity of not more than six months' sight to run. The Board has determined that, for purposes of determining eligibility, acceptances arising from transactions involving shipments between two foreign countries grow out of transactions involving the importation or exportation of goods (1916 Fed. Res. Bull. 532).

The proposed banker's acceptance may qualify as eligible provided it otherwise meets the eligibility requirements. There are no collateral or security-interest requirements for eligible acceptances that grow out of a trade transaction. STAFF OP. of Oct. 6, 1983.

Authority: FRA § 13 ¶ 7, 12 USC 372; 12 CFR 204.2(a)(1)(viii)(E).

"DEPOSIT"--Loan Participations with Repurchase Agreements

(2-325.16) Regulation D (Rulings and Opinions): "DEPOSIT" -- Loan Participations with Repurchase Agreements

2-325.16

"DEPOSIT"--Loan Participations with Repurchase Agreements

A bank inquired whether two different loan participation sales subject to certain repurchase arrangements are deposits under Regulation D. Under the first arrangement, the bank would be unconditionally obligated to repurchase the loan participation on a designated date prior to the maturity of the loan. If the borrower defaulted during the term of the participation, the purchaser of the participation would bear the risk of loss on the portion of the loan conveyed through the participation.

Under the second arrangement, the bank would participate an interest in the loan on a nonrecourse basis for the entire period of the initial loan. However, the arrangement would contain a put option that provided that the bank is unconditionally obligated to repurchase the asset at various times prior to maturity, at the option of the purchaser.

The transactions involved under both arrangements are repurchase agreements, based on the provisions that obligate the original holder of the asset to take back the underlying asset at some time in the future. The fact that the participation agreements provide that in the first arrangement the bank is not obligated to take back the asset in the event of the obligor's default on the underlying asset and that in the second arrangement it would be obligated only if the purchaser exercised its put option, does not vitiate the conclusion that the transaction involves a repurchase agreement and, as such, is a deposit subject to the reserve requirements of Regulation D. STAFF OP. of Nov. 16, 1983.

Authority: 12 CFR 204.2(a)(1)(vii).

"DEPOSIT"--Portions of Banker's Acceptances

(2-325.17) Regulation D (Rulings and Opinions): "DEPOSIT" -- Portions of Banker's Acceptances

2-325.17

"DEPOSIT"--Portions of Banker's Acceptances

The question has arisen whether portions of a banker's acceptance meet the eligibility criteria of section 13, paragraph 7 of the Federal Reserve Act if the entire acceptance meets the eligibility criteria. The transaction in question is as follows. Bank A creates, discounts, and resells an eligible acceptance to Bank B. Bank B then sells portions of the acceptance to Banks C and D and provides them with written confirmations of the sale. The confirmations specify the acceptance and the dollar amount of the portion being sold. The documentation is generally retained by Bank B or by another bank as safekeeping agent for Bank B. Generally, Bank B provides Banks C and D with a safekeeping receipt evidencing that Bank B is holding the acceptance as implied agent for Banks C and D.

The portions of eligible acceptances purchased by Banks C and D would meet the eligibility requirements of section 13, paragraph 7 of the Federal Reserve Act because the character of the transaction underlying the acceptance would carry through to each portion of the BA, notwithstanding the change in ownership of the acceptance. Staff stressed the importance of properly documenting the purchase of a portion of an acceptance. A depository institution purchasing a portion of an acceptance must identify the underlying transaction, the terms of the acceptance, and proper endorsements. In addition, copies of requisite documentation evidencing the eligibility of the acceptance must be maintained at each depository institution purchasing a portion of the acceptance. STAFF OP. of Feb. 3, 1984.

Authority: FRA § 13 ¶ 7, 12 USC 372; 12 CFR 204.2(a)(1)(vii)(E).

"DEPOSIT"--Repurchase Agreements

(2-325.18) Regulation D (Rulings and Opinions): "DEPOSIT" -- Repurchase Agreements

2-325.18

"DEPOSIT"--Repurchase Agreements *

Repurchase agreements involving municipal obligations that are secured by a pledge or escrow of U.S. government or agency securities do not meet the exemption from the definition of "deposit" under Regulation D since the underlying instrument remains that of the municipality or political subdivision in question. Further, the U.S. government has not undertaken to guarantee such obligations. Therefore, repurchase agreements of this type do not qualify as exempt obligations and would be subject to reserve requirements. STAFF OP. of April 20, 1982.

Authority: 12 CFR 204.2(a)(1)(vii)(B).

"DEPOSIT"--Repurchase Agreements Involving Municipal Securities

(2-325.19) Regulation D (Rulings and Opinions): "DEPOSIT" -- Repurchase Agreements Involving Municipal Securities

2-325.19

"DEPOSIT"--Repurchase Agreements Involving Municipal Securities

Regulation D exempts from reserve requirements any deposit arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase. The Board requires that the obligation underlying the repurchase agreement by a U.S. government or agency security. Municipal obligations that are secured by a pledge or escrow of U.S. government or agency securities do not meet this criterion, because the underlying instrument remains that of the municipality or political subdivision in question. In addition, the U.S. government has not undertaken to guarantee such obligations. Therefore, repurchase agreements involving municipal obligations, even if secured by pledges of U.S. government securities, do not quality as exempt obligations under Regulation D, and they would be subject to reserve requirements. STAFF OP. of May 17, 1982.

Authority: 12 CFR 204.2(a)(1)(vii)(B).

"DEPOSIT"--Interbank Exemption

(2-325.2) Regulation D (Rulings and Opinions): "DEPOSIT" -- Interbank Exemption

2-325.2

"DEPOSIT"--Interbank Exemption

An obligation issued by a depository institution to entities within the Farm Credit Administration (Federal Land Banks, Federal Intermediate Credit Banks, and Banks for Cooperatives) is eligible for an exemption considered to be equivalent to the interbank exemption from reserve requirements. Although the Federal Land Bank, Federal Intermediate Credit Bank, and Bank for Cooperatives do not appear to be "depository institutions" as this term is defined in section 204.2(m)(1) of Regulation D, these entities are federally chartered instruments and therefore may be regarded as "the United States government or an agency thereof" for purposes of section 204.2(a)(1)(vii)(A)(2) of Regulation D. STAFF OP. of Nov. 12, 1982.

Authority: 12 CFR 204.2(a)(1)(vii)(A)(2).

"DEPOSIT"--Repurchase Agreements

(2-325.21) Regulation D (Rulings and Opinions): "DEPOSIT" -- Repurchase Agreements

2-325.21

"DEPOSIT"--Repurchase Agreements

The Federal National Mortgage Association (FNMA) offers a servicing arrangement in which the lender pays FNMA a 25-basis-point guaranty fee. Under this plan, the lender remains liable for losses on mortgage defaults and FNMA is liable if the lender defaults. A member bank that holds a FNMA participation certificate under such a servicing arrangement bears the risk of loss in connection with the pool of mortgages underlying the obligation because it would be required to absorbany losses resulting from defaults by mortgagers. Thus, the issue arises whether the bank's risk of loss on the underlying mortgage is such that a repurchase agreement issued against such a security would be subject to reserve requirements.

The Board's rules contemplate that a repurchase agreement will involve a "transfer" of U.S. government or agency securities. Such a transfer could involve either a change of ownership or the bank's pledging such securities as collateral to the holder of a repurchase agreement. It is expected that such transactions result in the creation of a security or other interest in the U.S. government or agency securities running to the holder of the repurchase agreement. FNMA regards the guarantee issued in connection with these particular certificates as running to any third party holder of the securities, which includes the holder of a perfected security interest in FNMA certificates issued under the program. Thus, although the bank could incur a loss on the underlying mortgages, a repurchase-agreement holder that has a perfected security interest in the FNMA security would possess a full guaranty as to principal and interest by FNMA. A repurchase agreement on a FNMA certificate subject to such a servicing arrangement would therefore be exempt from Regulation D reserve requirements when it has been transferred to the repurchase-agreement holder, including the holder of a perfected security interest. STAFF OP. of Jan. 12, 1983.

Authority: 12 CFR 204.2(a)(1)(vii)(B).

"DEPOSIT"--Due Bills

(2-325.22) Regulation D (Rulings and Opinions): "DEPOSIT" -- Due Bills

2-325.22

"DEPOSIT"--Due Bills

When a depository institution issues a due bill with a maturity of less than three days and has no intention of collateralizing the due bill or of attempting to purchase the described security, the transactions cannot legitimately be regarded as due bills and should be regarded as deposits for purposes of Regulation D. Such transactions constitute devices to avoid reserve requirements. STAFF OP. of Jan. 14, 1983.

Authority: 12 CFR 204.2(a)(1)(iv).

"DEPOSIT"--Repurchase Agreements on U.S. Government Obligations

(2-325.23) Regulation D (Rulings and Opinions): "DEPOSIT" -- Repurchase Agreements on U.S. Government Obligations

2-325.23

"DEPOSIT"--Repurchase Agreements on U.S. Government Obligations

Any obligation of a depository institution arising from a transfer of direct U.S. government obligations or those fully guaranteed as to principal and interest by the U.S. government or its agencies, that the depository institution is obligated to repurchase, is not a deposit for purposes of Regulation D. A company asked whether certain obligations may be regarded as obligations of the United States, and thus whether repurchase agreements issued on them would be classified as deposits.

The company proposes to offer instruments that evidence ownership of future interest and principal payments of U.S. Treasury bonds that are held by a custodian pursuant to an agreement with the company for the benefit of the instruments' owner. The instruments would be issued in serial and principal form. A serial instrument evidences ownership of one of the semiannual interest payments due on one or more bonds, has a separate maturity with respect to each semiannual interest payment on the bonds up to and including the date of maturity, is available only in registered form, and may be transferred upon the custodian's register. A principal instrument evidences ownership of the principal of one or more of the bonds payable at maturity, is also available only in registered form, and may be transferred upon the custodian's register. Payments consist of the principal payment due on the bonds to which the principal instrument relates. No payments will be made prior to maturity. The face amount of each principal instrument is the payment to be received thereon and represents the principal payment on a whole bond or integral multiples thereof. Certain series of instruments have included callable instruments, which evidence ownership of future interests and principal payments on U.S. Treasury bonds subject to redemption by the United States prior to their stated maturity. No payments are made on callable instruments until six months after the first optional redemption date of the bonds to which the callable instruments relate. Payments will consist of the last ten semiannual interest payments on, and the principal of, the bonds to which the callable instrument relates.

The company indicates that the owners of the proposed instruments would have all the rights and privileges of owners of the Treasury bonds except that, in the absence of the United States' default on the bonds, the custodian is required to hold the bonds on behalf of the owners. Each instrument holder, as a real party in interest, has the right, upon default on the bonds, to proceed directly and individually against the United States. The custodian is not authorized to assert the rights and privileges of holders and has no duty to do so. Neither the custodian nor the company is responsible for payments due on instruments, although the custodian must apply all payments received on the bonds to the instrument to which they relate without making any deduction for its own fees or expenses. Furthermore, the bonds will be held in the name of the custodian in certificate form or book-entry form at the Federal Reserve Bank of New York (upon the request and at the expense of the instrument holder, the custodian will hold the bond or bonds relating to such instrument in certificate form).

It appears that the sole obligor on the bonds held in connection with the proposed instrument is the United States. The participation of the company and the custodian is similar to that of other custodians that hold U.S. government securities on behalf of customers and does not appear to give either party a credit obligation to the holders of the instrument. A failure to transmit payments when received would amount to a breach of the custodian's duty arising from its role as a fiduciary or agent rather than a default on the underlying obligation. In addition, if the United States were to default on the underlying obligation, it appears that the custodian and the company would not have an obligation to make payments on either interest or principal of the instrument. Accordingly, the instruments may be regarded as obligations of the United States. Therefore, repurchase agreements issued on the instruments would not be classified as deposits for purposes of Regulation D. STAFF OP. of Feb. 27, 1984.

Authority: 12 CFR 204.2(a)(1)(vii)(B).

"DEPOSIT"--Interbank (Fed-Funds) Liabilities

(2-325.24) Regulation D (Rulings and Opinions): "DEPOSIT" -- Interbank (Fed-Funds) Liabilities

2-325.24

"DEPOSIT"--Interbank (Fed-Funds) Liabilities

The interbank exception of section 204.2

(a)(1)(vii)(A)(1) of Regulation D does not apply in the case of a certificate of deposit issued either to another U.S. depository institution or to the U.S. agency of a foreign bank located in the United States. Generally, exceptions specified in section 204.2(a)(1)(vii) apply only to the types of deposits covered by that subparagraph and not to other types of deposits that are specifically described in other subparagraphs of section 204.2(a)(1). A certificate of deposit, identified as such, and issued by one depository institution to another is specifically described in section 204.2(a)(1)(i). Consequently, a certificate of deposit is a deposit upon which reserves must be maintained and does not fall within the interbank exception specified in section 204.2(a)(1)(vii)(A)(1).

Interbank transactions (sometimes referred to as fed-funds purchases or sales), regardless of their maturity, may not be represented by a certificate of deposit or other instrument. If fed funds are purchased from either another U.S. depository institution or from an "office" of a foreign bank located in the United States under an agreement that is not represented by a certificate of deposit or other instrument, these funds fall within the section 204.2

(a)(1)(vii)(A)(1) exception. An agency of a foreign bank is an office within the meaning of this provision. As a result, fed funds purchased from an agency of a foreign bank located in the United States qualify for the interbank exception of section 204.2(a)(1)

(vii)(A)(1) and are not deposits subject to reserve requirements. Because this exception makes no distinctions based on the maturity of interbank transactions, it applies to term as well as overnight transactions. STAFF OP. of Aug. 24, 1987.

Authority: 12 CFR 204.2(a)(1)(vii)(A)(1).

"DEPOSIT"--Repurchase Agreement

(2-325.25) Regulation D (Rulings and Opinions): "DEPOSIT" -- Repurchase Agreement

2-325.25

"DEPOSIT"--Repurchase Agreement

Any portion of a repurchase transaction that exceeds the market value of the securities at the time of the sale by the bank does not qualify as a repurchase transaction excepted from the definition of "deposit" under section 204.2(a)(1)(vii) of Regulation D. The repurchase exception is intended to apply only to bona fide transactions; otherwise, there would be nothing to prevent a bank from engaging in a $50 million "repurchase transaction" on the basis of a $1,000 security. That result was not contemplated in Regulation D. There is no bona fide transaction to the extent the market value of the securities transferred by the bank at the beginning of the transaction is less than the price the customer paid for the securities. For example, if a bank exchanges government securities that, for purposes of the transaction, are valued at $1 million even though their market value is only $800,000 (with a commitment to repurchase the securities for $1 million on the next day), then $800,000 would qualify for the repurchase exception, and $200,000 would be a deposit under Regulation D. STAFF OP. of December 13, 1991.

Authority: 12 CFR 204.2(a)(1)(vii).

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES

(2-329) Regulation D (Rulings and Opinions): DEPOSITS PAYABLE OUTSIDE THE UNITED STATES

2-329

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES

A deposit in a foreign branch made by a foreign bank, payable as a matter of right only outside the United States, is exempt from Regulations D and Q whether the foreign bank is acting as undisclosed principal for a U.S. individual or corporation, for a controlled foreign subsidiary of a U.S. corporation, or for a foreign national. STAFF OP. of July 29, 1970.

Authority: 12 CFR 204.1(c)(5), 204.2(t), and 217.1(c)(2).

At the time of this opinion, Federal Reserve policy discouraged U.S. banks from soliciting deposits in their foreign branches from U.S. residents unless the deposit was for an international purpose. The Board subsequently determined that the reasons for that policy are no longer valid and rescinded the portion of this opinion that referred to the policy (SR-94-49; September 2, 1994)

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES--Funds Deposited by U.S. Parent's Trust Department

(2-330) Regulation D (Rulings and Opinions): DEPOSITS PAYABLE OUTSIDE THE UNITED STATES -- Funds Deposited by U.S. Parent's Trust Department

2-330

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES--Funds Deposited by U.S. Parent's Trust Department

The trust department of a bank places trust cash in a non-interest-bearing time deposit at the bank's Nassau branch. Funds placed in the Nassau branch are not subject to reserve requirements and create a greater credit for the trust department than funds deposited with the bank's U.S. offices, which are subject to reserves. There is no written agreement between the Nassau branch and the trust department for this arrangement, and funds deposited have a one-day maturity.

The practice described does not violate Regulation D, which generally does not limit the ability of a foreign branch of a depository institution to accept deposits of $100,000 or more from U.S. residents, including cash balances of the bank's own trust department accounts. However, if the deposits at foreign branches are not payable only outside the United States, then such deposits would be subject to Regulation D reserve requirements. STAFF OP. of Feb. 23, 1982.

Authority: 12 CFR 204.2(t).

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES--CD Issued in the United States

(2-330.01) Regulation D (Rulings and Opinions): DEPOSITS PAYABLE OUTSIDE THE UNITED STATES -- CD Issued in the United States

2-330.01

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES--CD Issued in the United States

A bank proposed to issue, in New York City, certificates of deposits that would be payable at a branch of the bank outside of the United States. No provision in Regulation D or Q requires that a certificate of deposit be physically issued outside of the United States in order to qualify for the exemption from the reserve requirements and interest limitations. The only requirement is that the deposit be payable only at an office outside the United States, as defined in section 204.2(t). STAFF OP. of March 21, 1983.

Authority: 12 CFR 204.1(c)(5) and 204.2(t).

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES--Guarantee by U.S. Bank

(2-330.1) Regulation D (Rulings and Opinions): DEPOSITS PAYABLE OUTSIDE THE UNITED STATES -- Guarantee by U.S. Bank

2-330.1

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES--Guarantee by U.S. Bank

Reserve requirements do not apply to an obligation that is payable only at an office located outside the United States. This exemption is intended principally to enable foreign branches of U.S. banks to compete on a more equal basis with other banks in foreign countries in accordance with the laws and regulations of those countries. A customer who makes a deposit that is payable solely at a foreign office assumes the risk that the foreign country might impose restrictions on withdrawals. A U.S. bank inquires whether a certificate of deposit issued by a foreign subsidiary but guaranteed by the U.S. bank to be payable in the United States is a reservable obligation of the U.S. bank even though the U.S. bank does not receive any funds for use in its banking business.

When payment of a deposit in a foreign office is guaranteed by a promise of payment at an office in the United States in the event the deposit is not paid at the foreign office, the depositor does not assume the same risk assumed by local depositors but enjoys substantially the same rights as if the deposit had been made in a U.S. office of the bank. The fact that the proceeds are not used by the guarantor is irrelevant to the issue of the reservability of deposits guaranteed by the U.S. office. To ensure the effectiveness of, and to prevent evasions of, Regulation D, such guaranteed foreign deposit must be subject to the reserve requirements of the guarantor U.S. bank. STAFF OP. of July 29, 1983.

Authority: 12 CFR 204.1(c)(5).

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES--Domestic Collection Agent

(2-330.2) Regulation D (Rulings and Opinions): DEPOSITS PAYABLE OUTSIDE THE UNITED STATES -- Domestic Collection Agent

2-330.2

DEPOSITS PAYABLE OUTSIDE THE UNITED STATES--Domestic Collection Agent

A foreign branch of a domestic depository institution proposes to have its foreign branch issue time deposits for which a U.S.-based collection agent would be appointed and asks whether the deposit is exempt from reserves.

A domestic collection agent would collect matured time deposits on behalf of the owners. The collection agent may be an independent entity or an affiliate of the foreign branch issuer. It appears that the collection agent would be under contract to the domestic depository institution or its foreign branch to provide collection services for owners of the time deposits.

The appointment of a domestic collection agent would not necessarily result in the time deposit's being deemed not payable only outside the United States. So long as a deposit is payable only outside the United States, it is exempt from reserve requirements regardless of where it was physically issued. Regulation D does not require that the deposit also be issued only outside the United States.

The applicability of the exemption is limited to deposits that the depositor is entitled to demand payment of only outside of the United States, regardless of the circumstances involved. The purpose of this exemption was to permit foreign branches of U.S. banks to compete on a more equal basis with other banks in foreign countries in accordance with the laws and regulations of those countries. A customer who makes a deposit payable solely at a foreign office assumes whatever risk may exist that the foreign country might impose restrictions on withdrawals. When payment of a deposit in a foreign office is guaranteed by a promise of payment at the U.S. office, the depositor does not assume the same risk assumed by local depositors, but enjoys substantially the same rights as if the deposit had been made in a U.S. office of the bank. Consequently, if a domestic office of a bank expressly promises to pay a deposit of a foreign branch, that deposit is not deemed payable only outside the U.S.

A promise to pay such a deposit may be manifested by a course of dealing as well as contract. Consequently, when, as a matter of practice, the holders of time deposits payable outside the United States in fact receive the proceeds of the time deposits on presentment at a domestic office of the bank or at an agent for the bank, a question would exist whether there is a promise to pay the deposit within the United States.

Regulation D does not prohibit banks from paying such deposits at domestic offices, but it does not permit a bank to promise to do so and still take advantage of the exception. STAFF OP. of July 7, 1986.

Authority: 12 CFR 204.2(t).

EUROCURRENCY LIABILITIES--U.S. Company Providing Funding to Foreign Company

(2-333) Regulation D (Rulings and Opinions): EUROCURRENCY LIABILITIES -- U.S. Company Providing Funding to Foreign Company

2-333

EUROCURRENCY LIABILITIES--U.S. Company Providing Funding to Foreign Company

Outstanding extensions of credit from non-U.S. offices of U.S. depository institutions or Edge or agreement corporations to U.S. residents are regarded as Eurocurrency liabilities subject to a 3 percent reserve requirement. An exemption from reserve requirements on Eurocurrency liabilities is requested for a transaction that involves loans by foreign branches of U.S. banks to a U.S. company that in turn, under a credit agreement, lends the proceeds of the loans to a foreign company with operations solely outside the United States. The sole business of the borrower is to provide funding to the foreign company through remitting either the proceeds of such loans or the proceeds of commercial paper issued in the United States. The transaction allows the foreign company to obtain a more favorable interest rate on commercial paper borrowings from U.S. sources.

These outstanding extensions of credit are regarded as Eurocurrency liabilities. The U.S. company is clearly a "U.S. resident" as that term is used in the definition of "Eurocurrency liabilities." When the Board established the Eurocurrency reserve requirement on loans to U.S. residents by foreign branches of U.S. banks, it was concerned that a test for application of these requirements that turned on tracing the use of the loan would be difficult to administer and ineffective in achieving the desired result. Consequently, the test for loans to U.S. residents is based strictly on the address of the borrower. Exempting the transaction from the definition of "Eurocurrency liabilities" would result in the foreign company's obtaining U.S.-based financing on a reserve-free basis and lower-cost commercial paper from the U.S. market. STAFF OP. of Aug. 22, 1983.

Authority: 12 CFR 204.2(h)(1)(iii).

INTERNATIONAL BANKING FACILITIES--Time Deposit Held by Non-U.S. Resident

(2-335) Regulation D (Rulings and Opinions): INTERNATIONAL BANKING FACILITIES -- Time Deposit Held by Non-U.S. Resident

2-335

INTERNATIONAL BANKING FACILITIES--Time Deposit Held by Non-U.S. Resident

An IBF time deposit held by a non-U.S. resident may consist of funds used only to support the depositor's operations outside the United States. A depositor's personal investment activities could be regarded as operations under these provisions. Thus, an IBF could offer an IBF time deposit to an individual who is not a U.S. resident if the account represents funds that will be used solely to support personal investment activities outside the United States. STAFF OP. of Nov. 19, 1981.

Authority: 12 CFR 204.8(a)(2)(ii)(B).

INTERNATIONAL BANKING FACILITIES--Participation Arrangement

(2-335.1) Regulation D (Rulings and Opinions): INTERNATIONAL BANKING FACILITIES -- Participation Arrangement

2-335.1

INTERNATIONAL BANKING FACILITIES--Participation Arrangement

Under a proposed arrangement, the Cayman Islands branch ("branch") of a bank intends to transfer to the bank's IBF a 100 percent participation in each of certain advances and commitments termed "identified credits." The IBF would credit an account of, or otherwise pay to, the branch an amount equal to the aggregate outstanding principal balance of the identified credits that had been advanced and would agree to make available to the branch for disbursement to the borrowers all amounts required to be advanced pursuant to commitments to make loans. The branch would pay over to the IBF all amounts received from each borrower in connection with the identified credits (except for interest accrued to the date of the participations) but would have no obligation to the IBF should any borrower default. In addition, the letter states that "borrowers will not be notified that such participations have been made."

The use of this type of participation arrangement would not in and of itself prevent the identified credits referred to from being considered IBF extensions of credit or IBF loans. If the identified credits were to meet the requirements contained in section 204.8(a)(3) of Regulation D, the Board would consider those assets IBF extensions of credit or IBF loans, regardless of the participation arrangement through which the transfer is effected. However, if the branch would transfer any such credits after the first four reserve computation periods after the bank has established its IBF, the IBF would be expected to provide any written notice required under section 204.8(b) to the customers to whom the branch had extended such credits. STAFF OP. of Feb. 9, 1982.

Authority: 12 CFR 204.8(a)(3) and (b).

INTERNATIONAL BANKING FACILITIES--Settlement Account

(2-335.11) Regulation D (Rulings and Opinions): INTERNATIONAL BANKING FACILITIES -- Settlement Account

2-335.11

INTERNATIONAL BANKING FACILITIES--Settlement Account

Under the IBF regulation (12 CFR 204.8), a non-New York IBF could receive loan payments through a New York banking office by having an account with its establishing entity for settlement purposes and having the syndicated loan made through an account maintained by the establishing entity at a New York banking office such as an affiliated Edge corporation. Current rules would prohibit non-New York IBFs from maintaining a settlement account with a New York IBF (such as the IBF of the establishing entity's New York Edge corporation), because IBFs are not permitted to offer demand deposit accounts. However, the Legal Division believes the following procedure is consistent with the regulations for IBFs and operationally would facilitate loan syndications of IBFs.

It is permissible for an IBF of a depository institution or of a U.S. branch or agency of a foreign bank to maintain an account at an Edge or agreement corporation that is owned by the entity establishing the IBF or its foreign bank (in the case of a U.S. branch or agency) provided that (1) the account is to used only for loan settlement purposes, and (2) the account is cleared daily (that is, the account must show a zero balance at the end of each day). Similarly, such accounts subject to the same conditions could be maintained by an IBF of an Edge or agreement corporation at a U.S. office of the entity that owns it. This procedure is permissible because an IBF would not have an extension of credit in the form of a deposit outstanding to a U.S. resident or a balance due from a U.S. resident at the close of business each day. STAFF OP. of March 5, 1982.

Authority: 12 CFR 204.8.

IRA/KEOGH--Withdrawal by Depositor Age 59 1/2 or Disabled

(2-338) Regulation D (Rulings and Opinions): IRA/KEOGH -- Withdrawal by Depositor Age 59 1/2 or Disabled

2-338

IRA/KEOGH--Withdrawal by Depositor Age 59 1/2 or Disabled

As long as the bank fully discloses the fact that it is not guaranteeing the interest rate on IRA deposits once a depositor reaches age 59 1/2, and the depositor agrees to the terms, the bank may change the interest rate on IRA deposits at any time, so long as the change is consistent with the deposit agreement. The exception from the imposition of the early withdrawal penalty is permissive. Since a member bank is not compelled to pay IRA funds prior to maturity, it need not necessarily consider the funds to be immediately available to the depositor. Consequently, a bank may impose restrictions on the manner in which IRA funds are withdrawn by the depositor who reaches age 59 1/2 or becomes disabled. From an operational standpoint the bank may maintain IRA deposits in any form it wishes as long as the funds are properly reported on all the bank's financial and reporting statements as time deposits with a specified maturity and as long as the bank continues to observe the terms of the IRA deposits agreement (e.g., annuity-like payments). STAFF OP. of March 9, 1977.

Authority: 12 CFR 204.2(c)(1).

IRA/KEOGH--Withdrawal When Funds Are Rolled Over

(2-338.1) Regulation D (Rulings and Opinions): IRA/KEOGH -- Withdrawal When Funds Are Rolled Over

2-338.1

IRA/KEOGH--Withdrawal When Funds Are Rolled Over

It is not appropriate to permit penalty-free withdrawals when IRA funds are being rolled over in accordance with IRS provisions, because such withdrawals could cause destabilizing shifts of funds among financial institutions. Since, under IRS regulations, a person may have more than one IRA as long as the total annual contribution does not exceed the statutory limit, the above policy should not hamper individuals. An individual who intends to move to a different geographical location or join another qualified pension plan may leave existing IRA funds with the first institution and transfer them upon maturity. STAFF OP. of March 10, 1977.

Authority: 12 CFR 204.2(c).

IRA/KEOGH--Terminated Program

(2-338.11) Regulation D (Rulings and Opinions): IRA/KEOGH -- Terminated Program

2-338.11

IRA/KEOGH--Terminated Program

If a bank, in accordance with the deposit agreement, wants to terminate its IRA program for administrative reasons, application of the early withdrawal penalty is not required. Since it is likely that IRA participants would roll their deposits over to another depository institution in view of the substantial tax penalty that would be imposed for a premature distribution, depositors would not be receiving funds for a general use. STAFF OP. of Feb. 23, 1979.

Authority: 12 CFR 204.2(c).

IRA/KEOGH--Computation of Early Withdrawal Penalty

(2-338.12) Regulation D (Rulings and Opinions): IRA/KEOGH -- Computation of Early Withdrawal Penalty

2-338.12

IRA/KEOGH--Computation of Early Withdrawal Penalty

Computation of the actual penalty for early withdrawal of an IRA or Keogh time deposit depends initially on whether each deposit in the account resets the maturity of the entire account or whether each deposit has a separate maturity. Assuming that each deposit resets the maturity of the account, all interest earned by and credited to the account could be paid without the imposition of a penalty for early withdrawal. If each deposit has a separate maturity under the terms of the account, the bank could pay penalty-free interest earned on each deposit for the specific maturity period. If the maturity period for the deposit has lapsed and either the interest rate on or maturity period of the renewal term is different, interest on the deposit may not be paid penalty-free, since it would be included as part of the principal in the account.

The amount of the minimum penalty required to be imposed from withdrawal of the principal balance of the account varies depending on whether the bank uses a LIFO (last in, first out) or FIFO (first in, first out) method to pay withdrawals. Under the LIFO method, the funds needed to pay the with drawal are treated as coming from those deposits most recently made, proceeding back in time until the amount needed to pay the requested withdrawal is accumulated. Under the FIFO method, the withdrawal is paid from the funds first deposited to the account, with the amount needed to pay the withdrawal aggregated. After the source of funds being used to pay the withdrawal has been identified, the minimum penalty required will be at least seven days of interest that has been or could have been earned on the amount withdrawn at the nominal (simple interest) rate being paid on the deposit for withdrawals within six days of any partial withdrawal. For withdrawals within six days of establishing the IRA, the forfeiture is all interest actually earned. Funds deposited in IRAs are primarily for retirement and thus do not seem to be subject to many withdrawals. The penalty for early withdrawals, moreover, serves as an incentive to holders of IRAs to keep their funds on deposit in one particular financial institution, thereby decreasing the potential for destabilizing shifts of funds. STAFF OP. of May 22, 1979.

Authority: 12 CFR 204.2(c).

IRA/KEOGH--Early Withdrawal of Excess Contributions

(2-338.13) Regulation D (Rulings and Opinions): IRA/KEOGH -- Early Withdrawal of Excess Contributions

2-338.13

IRA/KEOGH--Early Withdrawal of Excess Contributions

The early withdrawal penalty should be imposed upon premature withdrawal of excess contributions to IRAs. To permit an exception to section 204.2(c) might encourage individu als to overcontribute to an IRA with the knowledge that they would be permitted to withdraw any excess contribution without penalty. A member bank may, however, agree to transfer funds held pursuant to, or overcontributed to, another account of the depositor, so long as the maturity of the deposits in the second account is the same as, or longer than, the maturity of the original deposit. No opinion is expressed on whether such transfers are permissible under applicable IRA laws and regulations, which may impose other, unrelated penalties. STAFF OP. of Jan. 21, 1980.

Authority: 12 CFR 204.2(c).

IRA/KEOGH--Early Withdrawal by Depositor Age 59 1/2 or Disabled

(2-338.14) Regulation D (Rulings and Opinions): IRA/KEOGH -- Early Withdrawal by Depositor Age 59 1/2 or Disabled

2-338.14

IRA/KEOGH--Early Withdrawal by Depositor Age 59 1/2 or Disabled

A member bank may pay all or a portion of IRA time deposit funds before maturity without penalty when the participant attains age 59 1/2 or is disabled. The regulation does not require that the withdrawal constitute a "distribution" under the IRC and IRS regulations. While some sophisticated IRA participants may be able to use the early withdrawal exception to obtain higher interest rates, such a practice is not widespread nor otherwise a threat to the competitive balance between depository institutions. In any event, the member bank always has the right to structure the terms of the IRA agreement to be more restrictive than Board regulations. STAFF OP. of Feb. 7, 1980.

Authority: 12 CFR 204.2(c).

IRA/KEOGH--Early Withdrawal Penalty

(2-338.15) Regulation D (Rulings and Opinions): IRA/KEOGH -- Early Withdrawal Penalty

2-338.15

IRA/KEOGH--Early Withdrawal Penalty

A member bank is not required to impose an early withdrawal penalty for premature withdrawals from an IRA account after the depositor reaches the age of 59 1/2. Withdrawal may be in the form of a lump sum payment or peri odic annuity-like payments to the depositor. However, if the money withdrawn is reinvested in a non-IRA time deposit, a member bank must impose the appropriate penalty if the reinvested money is withdrawn prior to maturity. STAFF OP. of Dec. 22, 1981.

Authority: 12 CFR 204.2(c).

IRA/KEOGH--Early Withdrawal of Excess Contributions

(2-338.16) Regulation D (Rulings and Opinions): IRA/KEOGH -- Early Withdrawal of Excess Contributions

2-338.16

IRA/KEOGH--Early Withdrawal of Excess Contributions

The question was raised whether a bank may waive the penalty for early withdrawals of excess contributions to an IRA when the depositor is 59 1/2 years of age or older or is disabled. Depository institutions may waive the early withdrawal penalty with regard to an IRA or a Keogh plan when the depositor attains age 59 1/2 or is disabled. Although excess contributions to an IRA are not considered part of the IRA for tax-deduction purposes, the depository institution may nevertheless waive the early withdrawal penalty for excess contributions if the depositor is 59 1/2 years of age or older or is disabled. Insofar as depository institutions are concerned, the balance of an IRA deposit are "funds contributed to an individual retirement account." Further, in view of the substantial deregulation of interest rate ceilings in the past year, it is unlikely that depositors would regularly make excess contributions to IRAs in an attempt to circumvent interest rate ceilings or avoid possible early withdrawal penalties. In addition, requiring the imposition of an early withdrawal penalty on excess contributions could affect the asset flexibility of IRA participants and have an adverse effect upon the objective of encouraging individuals to save for their retirement. Consequently, little purpose would be served in requiring that withdrawals of excess contributions to an IRA be treated differently than withdrawals of regular contributions to an IRA. STAFF OP. of June 15, 1984.

Authority: 12 CFR 204.2(c)(1).

NONPERSONAL TIME DEPOSITS--Deposits of Governmental Units

(2-340) Regulation D (Rulings and Opinions): NONPERSONAL TIME DEPOSITS -- Deposits of Governmental Units

2-340

NONPERSONAL TIME DEPOSITS--Deposits of Governmental Units

Deposits of governmental units such as states and political subdivisions are considered nonpersonal time deposits subject to reserve requirements under Regulation D because the beneficial interest of public funds is not held solely by natural persons. STAFF OP. of Sept. 26, 1980.

Authority: 12 CFR 204.2(g), 204.8, and 204.2(f)(1).

NONPERSONAL TIME DEPOSITS--Capital Equivalency Deposit Agreement

(2-340.1) Regulation D (Rulings and Opinions): NONPERSONAL TIME DEPOSITS -- Capital Equivalency Deposit Agreement

2-340.1

NONPERSONAL TIME DEPOSITS--Capital Equivalency Deposit Agreement

Deposits held under a capital equivalency deposit agreement established pursuant to section 4(g) of the International Banking Act are not personal time deposits and are subject to federal reserve requirements. STAFF OP. of Oct. 7, 1980.

Authority: IBA § 4(g), 12 USC 3102(g); FRA § 19, 12 USC 371; 12 CFR 204.2(a)(1)(ii).

NONPERSONAL TIME DEPOSITS--Annuity Contracts

(2-340.11) Regulation D (Rulings and Opinions): NONPERSONAL TIME DEPOSITS -- Annuity Contracts

2-340.11

NONPERSONAL TIME DEPOSITS--Annuity Contracts

A depository institution proposes to make an annuity program available to its customers. Under the program, an insurance company will issue annuity contracts to owners of deposit instruments issued by the institution. The deposit instruments will fund the annuity contract and will be re-registered in the name of the insurance company in an account at the institution. The records will reflect the beneficial interest of the annuitant, and a contract owner has rights only with respect to the assets allocated to his or her contract. The deposit accounts underlying the annuity contracts could be regarded as time deposits in which the entire beneficial interest is held by natural persons. STAFF OP. of Nov. 19, 1980.

Authority: 12 CFR 204.2(c)(1), (e), and (f)(1).

NONPERSONAL TIME DEPOSITS--Funds of Indian Tribes

(2-340.12) Regulation D (Rulings and Opinions): NONPERSONAL TIME DEPOSITS -- Funds of Indian Tribes

2-340.12

NONPERSONAL TIME DEPOSITS--Funds of Indian Tribes

Staff has reviewed the status of funds of Indian tribes as nonpersonal time deposits under Regulation D. Funds held in a fiduciary capacity for the sole benefit of one or more individuals may qualify as personal time deposits under section 204.2(g) of Regulation D if the specific individuals' interests in the funds are clearly identifiable; however, funds held in trust for various Indian tribes are not funds of individuals but rather are equivalent to funds of governmental units. In this connection, the Supreme Court has ruled that "Indian tribes are `distinct independent political communities, retaining their original natural rights' in matters of local self-government." 1 As an analogy, it can be argued that funds of state and local governmental units are held for the "sole benefit of natural persons" in that the purpose of any governmental unit is to provide services and benefits for all the persons residing therein; however, such persons do not have any specific, identifiable interest in the governmental funds that they shall be entitled to claim at some future time. Similarly, based on general information about the nature of tribal trust funds, it does not appear that individual members of any given tribe have identifiable interests in funds held in trust by the Bureau of Indian Affairs. 2 Rather, individual Indians have what might be described as an inchoate interest in tribal funds. Consequently, funds held in trust by the Bureau of Indian Affairs for various Indian tribes must be treated as nonpersonal time deposits for purposes of Regulation D. STAFF OP. of Oct. 30, 1981.

Authority: 25 USC 162a; 12 CFR 204.2(g) and 204.2(f)(1).

NOW ACCOUNT ELIGIBILITY-- Individuals Operating Business

(2-341) Regulation D (Rulings and Opinions): NOW ACCOUNT ELIGIBILITY -- Individuals Operating Business

2-341

NOW ACCOUNT ELIGIBILITY-- Individuals Operating Business

A husband and wife operating a profit-making business as individuals, but not as a partnership or other financial business organization, may maintain a NOW account at a member bank, since it is impracticable to distinguish between funds that are used in their business and other funds of those individuals. STAFF OP. of Jan. 23, 1979.

Authority: 12 CFR 204.130.

NOW ACCOUNT ELIGIBILITY-- International Organizations and Foreign Governmental Units

(2-341.1) Regulation D (Rulings and Opinions): NOW ACCOUNT ELIGIBILITY -- International Organizations and Foreign Governmental Units

2-341.1

NOW ACCOUNT ELIGIBILITY-- International Organizations and Foreign Governmental Units

Agencies of a foreign government may not maintain NOW accounts, because the beneficial interest in their funds remains with the foreign government, which is organized primarily for foreign government purposes. A consulate or embassy of a foreign government may not maintain NOW accounts, because the beneficial interest in the funds deposited by such consulates is with the government it represents. Federal law (12 USC 1832(a)) provides that only domestic governmental units are eligible to maintain NOW accounts. Similarly, U.N. officers (embassy staff) may not maintain NOW accounts if the funds deposited are funds of the United Nations or funds in which any beneficial interest is held by the United Nations, because the primary purpose of the organization is not charitable, fraternal, or educational (even though an element of a fraternal purpose is evidenced by the charter). STAFF OP. of March 5, 1979.

Authority: 12 CFR 204.130.

NOW ACCOUNT ELIGIBILITY-- Professionals

(2-341.11) Regulation D (Rulings and Opinions): NOW ACCOUNT ELIGIBILITY -- Professionals

2-341.11

NOW ACCOUNT ELIGIBILITY-- Professionals

Professionals operating on an unassociated basis are among the class of depositors eligible to maintain NOW accounts, since it is impracticable to distinguish between funds used in their individual and business capacity. Professionals operating as partnerships or corporations, however, are not eligible, since Congress intended that NOW accounts be made available only to individuals, and funds of such business organizations would always be used for business purposes. STAFF OP. of May 1, 1979.

Authority: 12 CFR 204.130.

NOW ACCOUNT ELIGIBILITY-- Beneficiary of Attorney Trust Fund

(2-341.12) Regulation D (Rulings and Opinions): NOW ACCOUNT ELIGIBILITY -- Beneficiary of Attorney Trust Fund

2-341.12

NOW ACCOUNT ELIGIBILITY-- Beneficiary of Attorney Trust Fund

The question has been raised whether attorney trust funds may be deposited in interest-bearing NOW accounts at member banks when the funds are maintained under the interest on lawyer trust account (IOLTA).

Section 303 of the Consumer Checking Account Equity Act of 1980 (title III of Pub. L. 96-221) provides the following test of eligibility for NOW accounts: (1) the account must consist solely of funds in which the entire beneficial interest is held by one or more individuals, by a governmental unit, or by an organization operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and (2) the organization must not be operated for profit (12 USC 1832(a)). The Board regards this provision as including organizations not operated for profit that are described in section 501(c)(3) of the Internal Revenue Code.

In determining whether client funds may be deposited in NOW accounts under IOLTA programs, the Board has required (1) evidence that the organization administering the program is either a governmental unit, or a nonprofit organization operated for "religious, philanthropic, charitable, educational, or other similar purposes" eligible for tax-exempt status under section 501(c)(3) of the Internal Revenue Code and (2) an opinion from the appropriate state attorney general that the organization involved holds the beneficial interest in the accounts because it has the exclusive right to the interest on the funds maintained in the program. STAFF OP. of Nov. 5, 1984.

Authority: Consumer Checking Account Equity Act § 303, 12 USC 1832; IRC § 501(c)(3), 26 USC 501(c)(3).

NOW ACCOUNT ELIGIBILITY--

Husband-and-Wife Partnership

(2-341.13) Regulation D (Rulings and Opinions): NOW ACCOUNT ELIGIBILITY -- Husband-and-Wife Partnership

2-341.13

NOW ACCOUNT ELIGIBILITY--

Husband-and-Wife Partnership

A husband and wife partnership is not eligible to maintain a NOW account at a member bank. Eligibility for NOW accounts is established by 12 USC 1832(a), which authorizes institutions to offer NOW accounts. Paragraph (2) of that section specifically excludes for-profit partnerships. Although a husband-and-wife for-profit partnership cannot maintain a NOW account, a husband and wife are permitted to maintain a joint NOW account for their nonpartnership purposes. STAFF OP. of Oct. 16, 1986.

Authority: Consumer Checking Account Equity Act § 303(a), 12 USC 1832(a); 12 CFR 204.130.

NOW ACCOUNT ELIGIBILITY--U.S. Embassies of Foreign Governments

(2-341.14) Regulation D (Rulings and Opinions): NOW ACCOUNT ELIGIBILITY -- U.S. Embassies of Foreign Governments

2-341.14

NOW ACCOUNT ELIGIBILITY--U.S. Embassies of Foreign Governments

Embassies of foreign governments are not eligible to maintain NOW accounts at member banks under Board interpretation 12 CFR 204.130 (at 2-275). That interpretation states that governmental units are generally eligible to maintain NOW accounts at member banks and is based on the statute authorizing depository institutions to offer NOW accounts (12 USC 1832(a)).

The Garn-St Germain Depository Institutions Act of 1982 amended 12 USC 1832(a) to extend eligibility to certain governmental units. The statutory language clearly extends eligibility for NOW accounts only to deposits of public funds of listed entities. Further, the legislative history confirms that the amendment was intended to extend eligibility only to domestic, Commonwealth, and territorial governmental units (see Conf. Rep. (S. Rep.) No. 641, 97th Cong., 2d Sess. (1982), at 92; S. Rep. No. 536, 97th Cong., 2d Sess., (1982), at 44). NOW account eligibility cannot be extended to governmental units other than those listed in this interpretation. STAFF OP. of Aug. 19, 1987.

Authority: Consumer Checking Account Equity Act § 303(a), 12 USC 1832(a); 12 CFR 204.130.

NOW ACCOUNT ELIGIBILITY--

Attorney Trust Accounts Other Than IOLTA

(2-341.15) Regulation D (Rulings and Opinions): NOW ACCOUNT ELIGIBILITY -- Attorney Trust Accounts Other Than IOLTA

2-341.15

NOW ACCOUNT ELIGIBILITY--

Attorney Trust Accounts Other Than IOLTA

A question was raised about the legality of a depository institution's establishing a NOW account to hold trust funds for a law firm other than under the programs known as interest on lawyer trust accounts (IOLTAs) described in 2-341.12. This proposed account would be established in the name of the law firm that is a partnership composed of professional associations. The law firm would have an interest in approximately 35 percent of the deposited funds, but interest earned on the funds would inure to the benefit of clients of the firm, and these clients would all be natural persons.

In the situation described, the law firm would have an interest in the deposited funds even though it would not have an interest in the interest earned on the funds. Because the law firm is a partnership, the account would not consist "solely of funds in which the entire beneficial interest is held by one or more individuals." Therefore, the account would not qualify as a NOW account. STAFF OP. of July 25, 1988.

Authority: Consumer Checking Account Equity Act § 303(a), 12 USC 1832(a); 12 CFR 204.130.

NOW ACCOUNT ELIGIBILITY-- Student Loan Accounts

(2-341.16) Regulation D (Rulings and Opinions): NOW ACCOUNT ELIGIBILITY -- Student Loan Accounts

2-341.16

NOW ACCOUNT ELIGIBILITY-- Student Loan Accounts

Department of Education regulations concerning student loan programs require participating institutions to set up a Perkins Loan Fund containing student loan monies, which must be maintained in interest-bearing accounts. The participating institution does not have the right to receive any of the income generated by assets in the account, which remain the property of the loan fund. Income from the account is considered to be held in trust for the Department of Education, and the account holder is not taxed on that income.

In general, interest may not be paid on demand deposits except for NOW accounts, which may be held only by individuals, certain not-for-profit organizations, or governmental units. Schools which operate on a for-profit basis are not eligible for NOW accounts. In the past, ineligible persons or entities have been permitted to deposit funds into NOW accounts in connection with interest on lawyer trust account (IOLTA) programs. Student loan program accounts are eligible for similar treatment. In determining whether to issue a favorable opinion letter to an IOLTA program, the staff has used the following criteria: (1) evidence that the beneficiary of the interest from the NOW accounts is either a 501(c)(3) organization under the Internal Revenue Code or is a governmental unit and (2) an attorney general's opinion that the organization or unit holds the entire beneficial interest in the account because it has the exclusive right to the interest earned on the account, or a similar statutory provision. In this case the beneficial interest in the funds would be considered to be held by individuals or by the United States government, either of which would be eligible to hold a NOW account. STAFF OP. of Feb. 28, 1989.

Authority: 20 USC 1087cc(a)(3); FRA § 19(i), 12 USC 371a; Consumer Checking Account Equity Act § 303, 12 USC 1832.

NOW ACCOUNT ELIGIBILITY-- Escrow Account for Taxes and Insurance Premiums

(2-341.16) Regulation D (Rulings and Opinions): NOW ACCOUNT ELIGIBILITY -- Escrow Account for Taxes and Insurance Premiums

See 2-343.1.

SAVINGS DEPOSITS--Totten Trust

(2-342) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- Totten Trust

2-342

SAVINGS DEPOSITS--Totten Trust

A savings account is often used as a vehicle for a Totten trust, a tentative, revocable trust that is created by the deposit of one's own money as a trustee for another with a presumption that title passes on the death of the trustee. The question has arisen whether the money market deposit account (MMDA) is suitable for use as a Totten trust in the same manner as a regular savings account. Regulation D treats an MMDA as a type of savings account, and Board staff is aware of no federal law that would prohibit the use of an MMDA as a vehicle for a Totten trust. However, private counsel should be consulted to determine whether, under state law, an MMDA is an appropriate vehicle by which to establish a Totten trust. STAFF OP. of April 7, 1983.

Authority: 12 CFR 204.2(d)(2)(ii).

SAVINGS DEPOSITS--Preauthorized Transfers from MMDA

(2-342.1) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- Preauthorized Transfers from MMDA

2-342.1

SAVINGS DEPOSITS--Preauthorized Transfers from MMDA

The question has arisen whether an arrangement whereby a depository institution sends an employee to a customer's place of business to receive authorization to make a transfer from the MMDA to another account of the depositor at the same institution would be regarded as a transfer subject to the limit of six preauthorized or automatic transfers per month. Such transfers are regarded as preauthorized transfers and therefore subject to the six-per-month limitation. STAFF OP. of June 27, 1983.

Authority: 12 CFR 204.2(d)(2).

SAVINGS DEPOSITS--Withdrawals by Messenger

(2-342.12) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- Withdrawals by Messenger

2-342.12

SAVINGS DEPOSITS--Withdrawals by Messenger

A bank offers an account arrangement inwhich a corporation opens a zero-balance checking account and a money market deposit account (MMDA). At the same time, the corporation enters into a messenger agreement and authorization with a messenger service and the bank. The messenger service is not owned or controlled by, or otherwise affiliated with, the bank. Under the messenger agreement, the corporation authorizes the messenger to deliver to the bank instructions to make transfers from the corporation's MMDA to its checking account. The authorization also indicates that the messenger is authorized to receive information confirming transactions from the bank and transmit it to the customer. The bank absorbs the expense associated with the messenger service.

A customer is permitted to write checks on its zero-balance checking account. At the beginning of the day, the bank determines the amount of checks that had been presented to it for payment the previous day. The messenger calls the bank daily and is told the amount that must be transferred from the customer's MMDA to its checking account to cover the checks presented. The messenger service then prepares a transfer instruction and delivers it to the bank. Upon receipt of the instruction, the bank makes the transfer. The bank is unaware of whether the messenger service consults with the customer before the instruction is initiated; however, such a consultation is not required. Interest is paid by the bank on the balance maintained in the MMDA on a sliding scale, depending on the level of balances maintained. A 3 percent reserve is maintained against the balances in the MMDA.

The purpose of the exception for withdrawals or transfers by messenger in the MMDA rules was to recognize that a depositor could appear in person or through an agent to effect the transactions. This exception was adopted after the Board balanced the hardships and burdens that could result if such withdrawals were limited against the potential risk that such transactions would be used to evade the six-preauthorized-withdrawal limitation. The Board believed that depositors who made withdrawals in person or through a messenger ordinarily would not use the arrangement to avoid the six-withdrawal limitation because the depositor would be required either to appear physically at the bank or establish an arrangement with a messenger. It was never contemplated that the bank itself would be involved in establishing and maintaining the arrangement. Further, it was understood that the depositor would be involved in the initiation of each transfer instruction, as is ordinarily the case.

The arrangement is inconsistent with the language and intent of the Board's regulations relating to the operation of MMDAs and is contrary to federal law and regulation for several reasons. First, the arrangement appears to be a device to avoid the prohibition against payment of interest on demand deposits because it results in the payment of interest on demand balances maintained to cover checks drawn on a corporate customer's checking account. Second, because of the bank's involvement in establishing and maintaining the relationship with the messenger service, the arrangement violates the limitation of six preauthorized transfers contained in Regulations D and Q. The bank absorbs the cost of the messenger and, in making daily transfers, deals virtually exclusively with the messenger rather than with the customer of the bank. It is apparent that the messenger is more an agent of the bank than of the customer and that the messenger agreement serves no purpose other than to assist in evasion of the limitation of six preauthorized transfers per month. The transfers, therefore, appear to be automatic and prearranged, particularly since there is no apparent requirement for contact between the messenger and the customer for authorization of each transfer. Finally, there is no indication that the bank imposes any charges or interest on the overdraft in the demand deposit account to which transfers are made, as required by Board regulations.

It is apparent that the sole purpose of the arrangement is to enable businesses to earn interest on their checking account balances. The program therefore violates Regulations D and Q because it results in the payment of interest on demand deposits and because the bank does not maintain transaction account reserves against balances in the MMDA accounts. Consequently, the bank was advised tocease offering the program to new customers and to terminate the accounts it had already established as soon as possible. STAFF OP. of Nov. 16, 1984.

Authority: 12 CFR 204.2(d)(2)(i) and (ii), 204.2(b), and 217.2.

SAVINGS DEPOSITS--MMDAs

(2-342.13) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- MMDAs

2-342.13

SAVINGS DEPOSITS--MMDAs

A bank proposes to offer MMDAs and to provide overdraft protection on these accounts under an arrangement by which the bank will transfer funds into the accounts to cover debits against the accounts in excess of the account balances. Transfers out of each MMDA will be restricted to not more than six per month.

Because transfers from each MMDA will be limited to not more than six per month (no more than three of which will be by check, draft, or similar order), the status of the accounts as MMDAs will not be affected by overdraft protection. In the questions and answers to Regulation D, the staff has said that the status of a savings account is not affected by the nature of transfers made into the account (see 2-301.9). Because MMDAs are savings deposits, that principle applies to MMDAs.

In limiting transfers from MMDAs, section 204.2(d)(2)(ii) states that an account is not a transaction account by virtue of an arrangement that "permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer)." When third-party transfers from each MMDA are limited to six per month, the satisfaction of the loans created as a result of overdraft protection constitutes the repayment of loans to the depository institution that originated the loans. Consequently, the repayment of those loans from MMDAs by means of preauthorized transfers will not count toward the six-transfer limit. STAFF OP. of Sept. 2, 1988.

Authority: 12 CFR 204.2(d)(2)(ii).

SAVINGS DEPOSITS--MMDAs on Escrow Accounts

(2-342.14) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- MMDAs on Escrow Accounts

2-342.14

SAVINGS DEPOSITS--MMDAs on Escrow Accounts

Regulations of the Department of Transportation specify that a "depository agreement" must be executed among a bank, an air carrier, and a tour operator and must provide for the return of funds to charter-flight participants if certain conditions are not met. A bank proposes to place the escrowed funds attributable to each tour operator in one money market deposit account (MMDA) per operator. Each tour operator may have 20 to 30 charter trips scheduled over a given period and will need to make at least three withdrawals by telephone transfer or by check per trip. Several of the 20 to 30 charter trips will be scheduled to depart each month, thus necessitating more than six transfers from each MMDA monthly.

Section 204.2(d)(2)(ii) of Regulation D defines an MMDA as--

a deposit or an account. . .that otherwise meets the requirements of section 204.2(d)(1) and from which under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers per calendar month or statement cycle. . . .

The number of permissible transfers is not affected by the number of beneficial holders of the account. Insofar as the transfer restrictions are concerned, the bank must look solely to the number of transfers permitted or authorized for the account. If that number exceeds six, the account does not qualify as an MMDA. In the arrangement described, the bank proposes to establish one MMDA for each tour operator and not one per individual.

Because more than six transfers per month will be made from the account, it will not qualify as an MMDA.

The types of depository agreements described cannot qualify as interest-bearing transaction accounts such as NOW accounts because the accounts will be held by profit-making entities (i.e., the tour operators) and the air carriers are beneficiaries of the accounts. (By statute, beneficial ownership is relevant for determining eligibility for a NOW account (see 12 USC 1832(a)). These funds could be placed in demand deposit accounts. However, unlike MMDAs and NOW accounts, demand deposit accounts may not pay interest. STAFF OP. of Aug. 24, 1987.

Authority: 12 CFR 204.2(d)(2)(ii).

SAVINGS DEPOSITS--MMDAs; Monitoring of Transfers

(2-342.15) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- MMDAs; Monitoring of Transfers

2-342.15

SAVINGS DEPOSITS--MMDAs; Monitoring of Transfers

A depository institution proposes to offer a money market deposit account (MMDA) monitored to discourage withdrawals or transfers in excess of those permissible for MMDAs. The monitoring system would look to consecutive months in which there were transfer violations. After the first month in which there were excess transfers, the institution would send a letter reminding the customer of the transfer limit and informing the customer that the limit was exceeded. If excess transfers were made during the next month, the institution would send a letter informing the customer of the violation and stating that continued violation would result in elimination of the transfer capacity or conversion of the account to a checking account. If the depositor exceeded the transfer limit for a third consecutive month, the institution would send a letter informing the customer that the account has been converted to a transaction account.

The proposed monitoring system would fail to ensure that there are no more than six transfers per month and also fail to ensure that there are no more than three transfers by check, draft, debit card, or similar order per month. A depositor could make unlimited transfers from the account for three consecutive months before the institution would close the account. For example, a customer could write 20 checks per week on its account in the first month. Only after the end of the month would the customer receive a reminder of the transfer limit. This transfer activity could continue through the second month, when the customer would receive another warning. Only after the third consecutive month of such activity would the account be changed to a transaction account.

If an account becomes a transaction account as defined in section 204.2(e) because of excess transfers, then Regulation CC, Availability of Funds and Collection of Checks (12 CFR 229), would also apply. STAFF OP. of Dec. 6, 1988.

Authority: 12 CFR 204.2(d)(1) and (2).

SAVINGS DEPOSITS--Terminals Authorizing Cash Disbursement by Retailer

(2-342.16) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- Terminals Authorizing Cash Disbursement by Retailer

2-342.16

SAVINGS DEPOSITS--Terminals Authorizing Cash Disbursement by Retailer

The question was raised whether the use in retail outlets of electronic terminals that authorize transactions, including the disbursement of cash by the retail outlets, would result in withdrawals from an automated teller machine (ATM) rather than third-party transfers by debit card, particularly under section 204.2(d)(2) of Regulation D.

A depository institution proposes to locate an electronic terminal on the premises of a retail merchant. The depository institution's customer would use this terminal to designate the account from which he or she wishes to withdraw funds, and the amount of the withdrawal. The terminal would authorize or reject the transaction, but would not disburse funds. Rather, the customer would take an authorization voucher produced by the terminal to a cashier's window on the merchant's premises, sign a receipt, and receive cash from the cashier. The customer would then be able to use the funds in any manner.

The term "savings deposit" includes deposits in savings accounts from which the depositor is permitted to make no more than three preauthorized or telephone (including computer) transfers per month. "Savings deposit" also includes accounts commonly known as money market deposit accounts (MMDAs), from which the depositor is permitted to make no more than six preauthorized or telephone (including computer) transfers per month and from which three of the six transfers may be accomplished by check, draft, or debit card. Such an account is not a "transaction ac count" by virtue of an arrangement that permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made at an ATM, regardless of the number of such transfers or withdrawals.

If the arrangement results in third-party transfers by debit card, the depository institution may permit only three such transfers per month from an MMDA. However, if the arrangement is treated as resulting in withdrawals from an ATM, no limit is placed on the number of withdrawals.

In discussing why transfers initiated at an ATM from one of the customer's accounts to another of the customer's accounts at the same depository institution, or why withdrawals paid directly to the customer do not count toward the permissible number of transfers and withdrawals from an MMDA, the staff has previously advised that "it is the character of the underlying transfer (that is, whether the payment initiated by the customer is made directly to the customer or the customer's account rather than to a third party or third party's account) that determines whether the transfer counts in distinguishing between a savings and a transaction account" (see 2-345.17).

The arrangement described above may be treated as resulting in withdrawals from an ATM, provided that the money will be paid directly to the customer. The dispensing of cash by personnel of the retail establishment, as opposed to through the terminal, does not so distinguish these transactions from withdrawals at an ATM as to warrant different treatment. In effect, staff of the retail establishment would be substituted for the cash-dispensing mechanism of an ATM.

It is important that customers be able to use the funds in any manner they choose. The retail establishment may not restrict the use of funds withdrawn by use of the terminal. It may not require that the funds be used for the purchase of goods or services from the retail establishment or for any other purpose.

Each depository institution from which such withdrawals are made should have an effective means of monitoring and policing the practices of the retail establishments in which the terminals are located to ensure that the establishments do not restrict the use of the funds. Such use of the terminals affects the status of the depository institution's deposit accounts, and improper practices on the part of a retail establishment could subject each depository institution not only to the reclassification of MMDAs or savings deposits to transaction or demand accounts under Regulation D, but also to penalties for violating Regulation Q if the accounts become demand deposits and interest is paid on them, and Regulation CC if appropriate disclosures and availability policies have not been followed.

This opinion addresses the Regulation D aspects of this program only and does not address other issues such as branch banking laws. STAFF OPs. of April 5, 1989, and Aug. 1, 1989.

Authority: 204.2(d)(2).

SAVINGS DEPOSITS--Monitoring Transfers from MMDAs

(2-342.17) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- Monitoring Transfers from MMDAs

2-342.17

SAVINGS DEPOSITS--Monitoring Transfers from MMDAs

A bank proposes to compile monthly reports of customers who had excessive money market deposit account transactions the previous month, notify customers by letter regarding those excessive transfers, and close any account if the transfer limits were violated during four consecutive months.

These procedures would not result in compliance with the six-transfer limit on MMDAs. Footnote 5, referred to in footnote 6 of section 204.2(d)(2)(ii), requires institutions to monitor transfers and contact customers who exceed the limits more than occasionally.

Footnote 5 provides that the rule limiting transfers need not be applied mechanically, but it does not change the fundamental requirement that a depository institution may not permit or authorize more than six transfersfrom an MMDA per month. Thus, if the circumstances warrant, an institution may not be required to close or reclassify an MMDA in the event of an occasional excess transfer from the account. As the staff stated in its opinion at 2-342.15, enforcement procedures that focus on excess transfers in consecutive months and that ignore excess transfers in any particular month would not be sufficient to prevent excess transfers from MMDAs, and would therefore fail to meet the monitoring requirements of Regulation D.

Ideally, controls on excess transfers should be sufficiently flexible to address both excess transfers in nonconsecutive months as well as the level of excess transfers in a particular month. Such controls would help depository institutions distinguish inadvertent violations of the transfer limits from abuses of the transfer limits. Thus, when a customer ignores the transfer limits applicable to an MMDA, the depository institution should take steps to close the account more quickly than it would an account from which the depositor inadvertently, and occasionally, exceeds the transfer limits by a single transfer. Nevertheless, a monitoring system that would detect and prevent all excess transfers may be costly to administer. For this reason, the staff has applied a general rule that an institution may continue to consider an account an MMDA even if there are excess transfers so long as those excess transfers are not the result of an attempt to evade the transfer limits, and if the excess transfers occur in not more than three months during any 12-month period. This working rule is not absolute, however, and the facts and circumstances must be considered in each case.

The proposed standards for monitoring MMDAs would not adequately prevent excess transfers. They do not take into account the number of excess transfers in an MMDA in any one month; a large number may be evidence of an intent to evade the transfer limits. Further, the standards would permit excess transfers in four consecutive months. Therefore, the proposed standards could result in violations of the transfer restrictions on MMDAs. STAFF OP. of Feb. 15, 1990.

Authority: 12 CFR 204.2(d)(2).

SAVINGS DEPOSITS--MMDA Transfer by Facsimile Machine

(2-342.18) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- MMDA Transfer by Facsimile Machine

2-342.18

SAVINGS DEPOSITS--MMDA Transfer by Facsimile Machine

A bank proposes to offer a money market deposit account (MMDA) arrangement in which deposits would be placed in the MMDA from various sources but daily transfers would be made to a commercial checking account of the customer. Instructions to make the transfer and instructions on third-party payments to be made from the checking account would be transmitted to the bank by facsimile machine.

The stated intention of the arrangement was to allow the payment of a high rate of interest on the funds with little administrative work by the bank. MMDAs have restrictions on the number of transactions by check, preauthorized agreement, or telephone, but no restrictions apply to withdrawals made by mail, by messenger, or in person. The bank views instructions received by facsimile machine as functionally the same as instructions received by mail.

In order for a deposit to be considered an MMDA for purposes of Regulation D, it must be limited to no more than six transfers per calendar month or statement cycle of at least four weeks. Section 204.2(d)(2)(ii) explicitly provides that transfers to another account of the depositor at the same institution or to a third party count toward the limitation when transfers are made by preauthorized or automatic transfer or telephonic agreement (including data transmission), order, or instruction. Therefore, the use of facsimile machines to transmit interaccount transfer instructions constitutes a data transmission order or instruction via telephone. STAFF OP. of January 30, 1991.

Authority: 12 CFR 204.2(d)(2)(ii).

SAVINGS DEPOSITS--Transfers for Overdraft Protection

(2-342.19) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- Transfers for Overdraft Protection

2-342.19

SAVINGS DEPOSITS--Transfers for Overdraft Protection

The question has arisen whether transfers from a savings deposit to cover overdrafts on a checking account are subject to the three-check or six-transfer limit of Regulation D. If a deposit or account is maintained in connection with an overdraft arrangement under which transfers are made from a savings deposit to a transaction account to cover checks presented to the depository institution that exceed the balance in the account as those checks are presented, the transfers are subject to the six-transfer limit. On the other hand, if transfers are made from a savings deposit to repay prior credit that was extended by the bank to pay checks drawn on a transaction account, the transfers should be considered transfers to repay loans from the bank. In the former case, the use of the savings-deposit balance as a substitute for a transaction-account balance is effectively limited by the six-transfer limit. However, in the latter case, the savings-account balance could be a substitute for the transaction-account balance because the bank imposes no limit on the transfers to repay loans from the institution. Thus, overdraft-protection arrangements involving extensions of credit must be reviewed to determine whether the savings accounts should be considered transaction accounts.

The factors determining whether these arrangements result in transaction accounts include the rates of interest charged on the outstanding balances under the lines of credit, the interest earned on the time deposits, the balances ordinarily maintained in the transaction accounts, the activity in the transaction accounts, the frequency with which advances on the lines of credit are satisfied from transfers from the savings deposits rather than other funds of the customer, and the extent that the depository institution suggests, promotes, or otherwise furthers the establishment of the arrangements. STAFF OP. of January 31, 1992.

Authority: 12 CFR 204.2(d)(2) and (e)(5).

See also 2-342.13 and 2-345.23.

SAVINGS DEPOSITS--Monitoring of Transfers

(2-342.2) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- Monitoring of Transfers

2-342.2

SAVINGS DEPOSITS--Monitoring of Transfers

A depository institution proposes the following system to monitor and enforce the transfer limits imposed on savings deposits. Whenever one to four transfers over the monthly maximum have occurred, a first notice would be sent to remind the customer of the prohibition against excess transfers or withdrawals. A second notice containing a strong message that excessive transfers or withdrawals will result in conversion of the account to a non-interest-bearing transaction account would be sent whenever any of the following occurred: five to fourteen transfers over the maximum in any month; three to four transfers over the monthly maximum in any two months out of the past 12 months; or three first notices in any 12-month period. Finally, if four first notices in any 12-month period or three second notices in a 12-month period have been sent, or if 15 or more transfers over the monthly maximum in any one month have been made, the depository institution would review the 12-month account history, including an averaging test, to determine whether there has been an attempt to evade the transfer limits. The depository institution would examine the average number of transfers per month to determine if the excess transfers result from the lack of customer control over the timing of negotiation of the checks or drafts ("bunching"). If the review does not reveal lack of intent to evade, or extenuating circumstances, then the depository institution would give third and final notice that the account had been converted to a non-interest-bearing transaction account.

The proposed monitoring system would not adequately ensure compliance with the transfer limits imposed in section 204.2(d)(2) of Regulation D. For example, a customer could have 14 transfers over the monthly maximum and receive only a second warning rather than have the account closed or reclassified. The customer could accrue three such second warnings before the account was closed or reclassified. This arrangement permits customers materially to exceed the transfer limits for savings deposits.

Footnote 5 to Regulation D requires depository institutions that do not prevent excess transfers to monitor transfers from savings deposits to ensure that customers do not use these accounts as substitutes for transaction accounts. Monitoring systems that do not strictly limit the number of transfers to the permissible levels should be designed to enable the institution to consider the probable causes of excess transfers so that it can take appropriate action. If an institution monitors a savings account during a month and notifies a customer of transfers in excess of the transfer limits promptly after the excess transfers are discovered, the customer may take appropriate steps to prevent additional excess transfers during the remainder of the month, and the institution may not need to close the account or take other remedial action. On the other hand, if monitoring is performed and notice is given only after the close of the month, the customer who has exceeded the transfer limits early in the statement cycle might have a significant number of additional transfers during the month that will far exceed the transfer limits.

The monitoring and notice provisions of footnote 5 are intended to be used by depository institutions to give customers an opportunity to revise their transfer practices before the institution must take remedial action. They are not intended to expand the number of transfers that could be made from a savings deposit. STAFF OP. of February 11, 1992.

Authority: 12 CFR 204.2(d)(2).

SAVINGS DEPOSITS--Six-Transfer Limit

(2-342.21) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- Six-Transfer Limit

2-342.21

SAVINGS DEPOSITS--Six-Transfer Limit

The question has arisen whether a check that is deposited into a savings account and subsequently returned and charged back against the account must be considered one of the six transfers per month permitted under Regulation D.

When a check is returned unpaid to a depository institution that had received the check as a deposit to a savings account and had provided credit for the deposit to its customer, the depository institution may charge the check back to the customer's account and that charge would not count as a transfer and therefore would not count toward the six-transfer limit applicable to savings accounts. STAFF OP. of July 29, 1992.

Authority: 12 CFR 204.2(d).

SAVINGS DEPOSITS--Transfer Restrictions

(2-342.22) Regulation D (Rulings and Opinions): SAVINGS DEPOSITS -- Transfer Restrictions

2-342.22

SAVINGS DEPOSITS--Transfer Restrictions

Several questions have arisen concerning the transfer limits on savings deposits in section 204.2(d)(2) of Regulation D. Although the questions refer to savings and money market accounts as separate types of accounts, Regulation D no longer makes this distinction. (See 56 Fed. Reg. 15493 at 15494, April 17, 1991.)

Question 1: A savings account is used for overdraft protection for checks drawn on a demand deposit account. Does the six-transfer limit apply to overdraft transfers? Are transfers to cover overdrafts created as a result of credit card, ATM, and ACH transactions subject to the six-transfer limit?

Regulation D defines "savings deposit" in 204.2(d)(2) and "transaction account" in section 204.2(e). Overdraft protection can be accomplished by directly transferring funds from a savings account to pay charges to the account or by posting those charges to a line of credit. In some cases, however, it is accomplished by a combination of these methods: a line of credit is extended to the customer and drawings on the line of credit are satisfied by preauthorized transfers from a savings account.

A transfer from a savings deposit to repay a bona fide loan from the bank resulting from overdraft protection does not count as a transfer subject to the transfer limit (see 2-342.13). Depending upon the facts and circumstances, section 204.2(e)(5) might apply to an arrangement under which a depository institution allows a customer to have draws on a line of credit to pay overdrafts on an account and then allows the customer to satisfy those draws by transfers from a savings deposit. If section 204.2(e)(5) applies, the savings deposit will be reclassified as a transaction account. (See 2-345.23.)

Generally, if by arrangement transfers are made from a savings account to a transaction account, each transfer to the transaction account counts toward the six-transfer limit in section 204.2(d)(2). In that case, the use of the savings-account balance as a substitute for a transaction-account balance is effectively limited by the six-transfer limit. However, if the transfers from the savings account are used to repay credit extended to the holder of the transaction account because of overdrafts, the arrangement must also be analyzed under section 204.2(e)(5) because the extension of credit, in conjunction with the transfers, may increase the depositor's ability to substitute savings-account balances for transaction-account balances. In these cases, a savings account may be considered a transaction account even though fewer than six transfers per month are made from the savings account.

In determining whether a line-of-credit overdraft arrangement involving transfers from a savings account results in the savings account being considered a transaction account under section 204.2(e)(5), one must consider all the facts and circumstances, including the rates of interest charged on the outstanding balance under the line of credit; the interest rate earned on the savings account; the balance ordinarily maintained in the transaction account; the activity in the transaction account; the frequency with which advances on the line of credit are satisfied from transfers from the savings account rather than other funds from the customer; and the extent to which the depository institution suggests, promotes, or otherwise furthers the establishment of the arrangement.

The staff has also been asked whether transfers to cover overdrafts created as a result of credit card, ATM, and ACH transactions are subject to the six-transfer limit. A credit card transaction is a transaction by which credit is extended to the cardholder. Although credit extended by means of a credit card may be paid by means of a transfer from a savings account, the individual credit card transactions would not ordinarily count as transfers from the savings deposit. A debit card, however, does access an account directly, and debits from a savings account by means of a debit card are limited to three per month. ACH transactions on a savings account are subject to the six-transfer limit. ATM cash withdrawals or transfers from a savings deposit to another account of the depositor at the same depository institution are not subject to either the three- or six-transfer limit.

Question 2: If four checks are overdrawn against an overdraft-protected demand deposit account on the same day, should the system count one or four transfers if (1) the processing system used by the bank transfers funds for each check or (2) the system sums the four checks and makes one transfer to cover all four checks.

These transactions are governed by section 204.2(d)(2), which limits transfers from a savings account to another account of the depositor at the same institution to six per month. Generally, each separate transfer from a savings account to a transaction account should be counted against the transfer limit. If four checks are processed separately (for example, when each check is presented to the institution at a different time during the day for payment over the counter in cash) and the bank transfers funds from the customer's savings account to the customer's transaction account at the time each check is paid, then the savings account would be charged with four transfers. Likewise, if transfers from a checking account would result in overdrafts and a separate transfer from the savings account to the checking account would be made to cover each funds transfer, then each transfer from the savings account would count toward the six-transfer limit. The making of separate transfers to cover individual checks, even if the checks were presented together, ordinarily would result in separate transfers for purposes of the transfer limit, unless the depository institution could demonstrate that the separation of the transfers was wholly unrelated to the separate payment of checks. If, however, the checks that are presented on the transaction account are processed in a batch rather than individually, and only one transfer equal to the sum of the overdrafts is made from the savings account, then only one transfer from the savings deposit need be charged against the transfer limit.

If a transfer is made from a savings deposit to repay a prior extension of credit by the bank and the credit was extended to pay checks drawn on a transaction account, the transfer generally would be considered a transfer to repay the loan from the bank and usually would not count toward the six-transfer limit. In that case, however, the savings-account balance could be a substitute for the transaction-account balance, and the arrangement must be reviewed to determine whether the savings account should be considered to be a transaction account under section 204.2(e)(5).

Question 3: Do transfers from a savings account to another deposit at the institution count toward the six-transfer limit? Does it matter what type of account the funds are transferred to--such as to a demand deposit account or an individual retirement account? Does it matter whether the transfers are for a specific amount and occur on the same day each month--such as to pay rent?

Transfers from a savings account to another deposit account at the institution would count toward the six-transfer limit if they were made by telephone or by any other means listed in section 204.2(d)(2), regardless of whether the transfers are made on a particular day each month or whether the amount of the transfer varies or is constant from month to month and regardless of the type of account the funds are transferred to.

Question 4: Verify that the following list correctly categorizes the transactions that fall within each category:

• Three-transaction limit. Point-of-sale transactions with either ATM or credit card company debit cards and withdrawals payable to third parties initiated by checks or drafts

• Six-transaction limit. Preauthorized transfers through ACH or EFT; automatic transfers for overdraft protection; telephone, fax, and computer transactions to transfer funds to another account at the same institution; transfers between a parent's account and his or her child's account; and withdrawals initiated by telephone where the proceeds are paid to third parties

• Unlimited. Transfers to pay loans at the same institution; withdrawals made (1) in person, (2) at an ATM, (3) by messenger, or (4) by mail (via a check sent to the depositor); telephone withdrawals where the withdrawn funds are mailed to the account holder; and transfers between accounts of the depositor at the same institution initiated (1) in person, (2) by mail, (3) by ATM, or (4) by messenger

The transfers listed under the three-transfer limit are subject to that limit. The transfers listed under the six-transfer limit are generally subject to that limit, and the transactions listed in the unlimited-transfer category generally are not subject to specific transfer limits. However, overdraft-protection arrangements and transfers to pay loans at the same institution could result in a savings account being classified as a transaction account under section 204.2(e)(5). STAFF OP. of July 13, 1992.

Authority: 12 CFR 204.2(d)(2) and (e)(5).

See also 2-342.13, 2-345.23, and 2-345.25.

TIME DEPOSITS--Early Withdrawal; Greater-Than-Required Penalty

(2-343) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal; Greater-Than-Required Penalty

2-343

TIME DEPOSITS--Early Withdrawal; Greater-Than-Required Penalty

A bank is free to impose a greater penalty for the withdrawal of time deposits before maturity than that prescribed by Regulation D, as long as the actual penalty is clearly brought to the attention of the depositor upon creation of the deposit agreement. STAFF OP. of Jan. 27, 1975.

Authority: 12 CFR 204.2(c).

TIME DEPOSITS--Funds Held in Escrow

(2-343.1) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Funds Held in Escrow

2-343.1

TIME DEPOSITS--Funds Held in Escrow

An escrow account for tax and insurance premiums in which the entire beneficial interest is held by one or more individual mortgagees who qualify in their own right to hold a NOW account or a personal time deposit may qualify as such an account or deposit. STAFF OP. of May 1, 1975.

Authority: 12 CFR 204.2(f) and 204.130.

TIME DEPOSITS--Early Withdrawal; Transfer of Bank Assets and Liabilities

(2-343.11) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal; Transfer of Bank Assets and Liabilities

2-343.11

TIME DEPOSITS--Early Withdrawal; Transfer of Bank Assets and Liabilities

If a member bank transfers the assets and liabilities (including its certificates of deposit) of one of its branches to a newly chartered banking institution, the transfer of deposits does not constitute an early withdrawal of time deposit funds, and no early withdrawal penalty should be imposed so long as new certificates are issued on the same terms and conditions as the original certificates (that is, at the same rate of interest and maturity). It is appropriate, however, for the member bank to inform the depositors affected that they are under no obligation to exchange their certificates for newly issued instruments. In addition, the depositors should be notified that the early withdrawal penalty would be applied if they were to redeem their deposits prior to maturity, since a new certificate would represent only a change in the obligor of the instrument, and not a change in any of the terms, including the maturity and interest rate payable. STAFF OP. of Dec. 14, 1978.

Authority: 12 CFR 204.2(c)(1).

TIME DEPOSITS--Early Withdrawal; Death of Owner

(2-343.12) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal; Death of Owner

2-343.12

TIME DEPOSITS--Early Withdrawal; Death of Owner

The beneficiary of a "Totten trust" does not qualify as an "owner" for the purposes of the death exception to the early withdrawal penalty rule. "Owner" is defined as any individual who at the time of his or her death has either full legal title or beneficial title to all or a portion of the funds and full power of disposition and alienation with respect thereto. Under a "totten trust," the beneficiary acquires legal title to the deposit only upon the unequivocal act or declaration of the grantor during his or her lifetime. In the absence of either of these events, the trust is tentative since the grantor has the power to revoke the trust at will, and the beneficiary lacks full power of disposition and alienation with respect to any portion of the funds. STAFF OP. of Aug. 3, 1979.

Authority: 12 CFR 204.2(c).

TIME DEPOSITS--Early Withdrawal; Death of Owner

(2-343.13) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal; Death of Owner

2-343.13

TIME DEPOSITS--Early Withdrawal; Death of Owner

State law determines who is owner of time deposit funds, whether named or unnamed. Under the death exception to the early withdrawal penalty rule, a bank should require reasonable assurance that, at the time of his or her death, an individual qualified as an owner of the funds under state law, within the regulatory definition of the term "owner." To facilitate determination of ownership, when the time deposit is established, the bank may wish to obtain from a depositor a statement con cerning whether or not there are other owners. STAFF OP. of Dec. 9, 1977.

Authority: 12 CFR 204.2(c).

TIME DEPOSITS--Transferability

(2-343.14) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Transferability

2-343.14

TIME DEPOSITS--Transferability

A time deposit would not be regarded as transferable if the depository institution added the name of another natural person to the deposit of a natural person in order to create joint ownership, as long as the transaction takes place on the books of the depository institution. STAFF OP. of Sept. 25, 1980.

Authority: 12 CFR 204.2(f)(1)(iv).

TIME DEPOSITS--Early Withdrawal; Death of Depositor

(2-343.15) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal; Death of Depositor

2-343.15

TIME DEPOSITS--Early Withdrawal; Death of Depositor

A member bank is not required to apply the early withdrawal penalty prescribed in section 204.2 of Regulation D if the time deposit has renewed automatically after the death of the original depositor and title to the time deposit had passed automatically to the depositor's surviving spouse. However, if at the maturity of the deposit, the owner's heir or representative has reinvested the funds in a deposit with a maturity that varies from the maturity of the original deposit, the heir or representative is no longer able to request a penalty-free early withdrawal, because he or she has consciously chosen to change the nature of the decedent's interest, and the new time deposit can therefore no longer be regarded as that of the decedent. STAFF OP. of April 8, 1981.

Authority: 12 CFR 204.2(c).

TIME DEPOSITS--Early Withdrawal; Agreement to Pay Before Maturity

(2-343.16) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal; Agreement to Pay Before Maturity

2-343.16

TIME DEPOSITS--Early Withdrawal; Agreement to Pay Before Maturity

A member bank cannot agree in advance to pay a time deposit before maturity. STAFF OP. of Dec. 19, 1978.

Authority: 12 CFR 217.4(a) [since revised; now covered by 12 CFR 204.2(c)(1).]

TIME DEPOSITS--Early Withdrawal; Zero-Interest-Rate Deposit

(2-343.17) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal; Zero-Interest-Rate Deposit

2-343.17

TIME DEPOSITS--Early Withdrawal; Zero-Interest-Rate Deposit

Time deposits on which no interest is earned are not inappropriate per se. However, such time deposits should be carefully monitored in view of the opportunity for an institution to avoid or reduce required reserves by classifying funds otherwise subject to the higher reserve requirements of a demand deposit as a zero-interest-rate time deposit. A time deposit on which no interest is paid is subject to the provisions of Regulation D concerning payment before maturity. Since the early withdrawal penalty is a function of the interest rate being paid on the deposit, application of the early withdrawal penalty provides no disincentive to early withdrawal and, in fact, permits the time deposit to function as a demand deposit. Therefore, time deposits on which no interest is paid may not generally be paid before maturity unless one of the mandatory exceptions to the early withdrawal penalty is applicable. STAFF OP. of June 4, 1981.

Authority: 12 CFR 204.2.

TIME DEPOSITS--Early Withdrawal; Evasion of Reserve Requirements

(2-343.19) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal; Evasion of Reserve Requirements

2-343.19

TIME DEPOSITS--Early Withdrawal; Evasion of Reserve Requirements

The rule, formerly in section 217.4(f) of Regulation Q, requiring that the rate charged by a member bank on a loan to a depositor secured by the depositor's time deposit must be no less than 1 percent in excess of the rate paid on the deposit, was rescinded by the Board effective April 1, 1986. Nevertheless, in certain circumstances, making a loan secured by a time deposit within six days after the date the deposit is opened, rather than assessing a penalty for an early withdrawal, might be considered an evasion of the reserve requirements of Regulation D--for example, if the depositor and the institution agree that the deposit will be withdrawn on the seventh day and used to pay off the loan. STAFF OP. of July 29, 1986.

TIME DEPOSITS--Early Withdrawal Penalty; Call Provisions

(2-343.2) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal Penalty; Call Provisions

2-343.2

TIME DEPOSITS--Early Withdrawal Penalty; Call Provisions

The presence of certain call provisions in a contract for a nonpersonal time deposit with a maturity of 18 months or more would not necessarily require the certificate of deposit to be classified as a nonpersonal time deposit with a maturity of less than 18 months.

Depository institutions propose to issue longer-term deposits that permit a call for redemption by the depository institution a specified period of time after issuance and would provide that redemption would occur upon the expiration of a specified time period after notice by the depository institution. For instance, a bank might issue time deposits and provide that it may, upon 30 days' notice, call the obligations for redemption on any date after five years from the date of issuance of the deposits. The deposit contract would not allow a call by the issuer to be effective any earlier than one and one-half years after the date of issuance of the deposit.

It appears that no withdrawals could be made from the deposit account within the first one and one-half years after the date of the deposit and no withdrawal would occur on less than seven days' notice. Such a deposit is properly classified as a deposit with a maturity of one and one-half years or greater.

The staff assumes that any call by the depository institution results in payment of the entire deposit. Consequently, this opinion does not address the issue of the status of any amounts remaining on deposit after a partial early withdrawal. STAFF OP. of July 23, 1987.

Authority: 12 CFR 204.2(d) and (f)(3).

TIME DEPOSITS--Early Withdrawal Penalty; Put Provisions

(2-343.21) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Early Withdrawal Penalty; Put Provisions

2-343.21

TIME DEPOSITS--Early Withdrawal Penalty; Put Provisions

The presence of certain put provisions in a contract for a nonpersonal time deposit with a maturity of 18 months or more would not necessarily require the deposit to be classified as a nonpersonal time deposit with a maturity of less than 18 months.

Depository institutions propose to issue longer-term deposits that would permit the depositor to put the deposit back to the issuing depository institution (i.e., the depositor could require the depository institution to redeem the deposit) a specified period of time after issuance and would provide that redemption would occur upon the expiration of a specified time period after notice by the depositor. For instance, a bank might issue deposits and permit the depositor to present the obligations for redemption, upon at least ten days' notice, on any date after five years from the date of issuance of the deposits. Depositors would not be allowed to exercise their right to put any earlier than one and one-half years after the date of issuance of the deposit and in no event less than seven days after written notice of the put.

No withdrawals could be made from the deposit account within the first one and one-half years after the date of the deposit, and no withdrawal would occur on less than seven days' notice. Such a deposit is properly classified as a deposit with a maturity of one and one-half years or more. Section 204.2(f)(3) of Regulation D, which describes long-term nonpersonal time deposits, indicates that if no withdrawal is permitted from the deposits during the first one and one-half years, the deposit is properly classified as having a maturity of one and one-half years or more even if early withdrawal of the deposit is permitted after that time.

The staff assumed that any exercise of the right to withdraw occurs after at least seven days' written notice so that such a withdrawal occurs on or after the date 18 months from the date the deposit is opened and results in payment of the entire deposit. Consequently, this opinion does not address the issue of the status of any amounts remaining on deposit after a partial withdrawal. STAFF OP. of Aug. 5, 1988.

Authority: 12 CFR 204.2(d) and (f)(3).

TIME DEPOSITS--Reclassification as Transaction Accounts

(2-343.22) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Reclassification as Transaction Accounts

2-343.22

TIME DEPOSITS--Reclassification as Transaction Accounts

The question has arisen whether a time deposit may be used to secure a line of credit if the customer could draw on the line of credit other than by appearing at the depository institution, and whether individual draws on a line of credit would count toward the Regulation D transfer limits for savings deposits.

A credit card or other line of credit arrangement secured by a time or savings deposit might not result in the need to reclassify the time or savings deposit as a transaction account in certain cases. The facts of each arrangement must be considered, including the rates of interest charged on the outstanding balances under the lines of credit; the interest earned on the time deposits; the balances ordinarily maintained in the transaction accounts; the activity in the transaction accounts; the frequency with which advances on the lines of credit are satisfied from transfers from the savings deposits rather than other funds from the customer; and the extent to which the depository institution suggests, promotes, or otherwise furthers the establishment of the arrangements. If extensions of credit under the arrangement are regularly satisfied from payments from the depositor rather than from the time or savings deposit, and if the rate of interest charged on the credit extended substantially exceeds the interest earned on the time or savings deposit--e.g., 18 percent vs. 4 percent--then the arrangement generally would not result in a transaction account. Further, individual extensions of credit under the credit line would not count toward the transfer limit on the time or savings deposit as specified in section 204.2(d)(2). STAFF OP. of February 11, 1992.

Authority: 12 CFR 204.2(d)(2) and (e)(5).

See also 2-365.2.

TIME DEPOSITS--IRAs and Keoghs

(2-343.22) Regulation D (Rulings and Opinions): TIME DEPOSITS -- IRAs and Keoghs

See IRA/Keogh.

TIME DEPOSITS--Nonpersonal

(2-343.22) Regulation D (Rulings and Opinions): TIME DEPOSITS -- Nonpersonal

See Nonpersonal Time Deposits.

TRANSACTION ACCOUNTS-- Combined Savings/Checking Statement

(2-345) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Combined Savings/Checking Statement

2-345

TRANSACTION ACCOUNTS-- Combined Savings/Checking Statement

Under the account arrangement, a single statement of account is provided for a depositor's savings and checking accounts. Transfers from savings to checking may be made only by teller or through the use of an automated teller machine. No preauthorized or telephone transfer access to the savings account is provided. Further, a depositor is not permitted to transfer funds from savings to checking solely for the purpose of making a payment to a third party.

The savings account would not be considered a transaction account for reserve maintenance purposes. One aspect of the plan does deserve comment, however. Any advertising, deposit-contract relationships, and statements of account should indicate clearly that two accounts--a savings and a checking account--are involved, to ensure that customers do not think the service provided constitutes a single account. STAFF OP. of Oct. 7, 1980.

Authority: 12 CFR 204.2(e).

TRANSACTION ACCOUNTS-- Withdrawals from Savings Account Through ATM

(2-345.1) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Withdrawals from Savings Account Through ATM

2-345.1

TRANSACTION ACCOUNTS-- Withdrawals from Savings Account Through ATM

Savings accounts should not be regarded as transaction accounts merely because customers of subsidiary banks of a bank holding company may effect cash withdrawals from those accounts through an automated teller machine (ATM) of either the bank at which they maintain their account or an affiliated bank or because they may effect transfers of funds from a savings account to another account maintained at the same bank by using an ATM or a check-verification terminal of the bank at which they maintain their accounts. Such transactions are similar to effecting a transaction by appearing in person at an institution. STAFF OP. of Dec. 22, 1980.

Authority: 12 CFR 204.2(e).

TRANSACTION ACCOUNTS-- Transfers Through Institution to Third Parties

(2-345.11) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Transfers Through Institution to Third Parties

2-345.11

TRANSACTION ACCOUNTS-- Transfers Through Institution to Third Parties

A company offers an insurance program to and through credit unions. Under the program, a master policy is issued to the credit union, and the credit union is required by the policy to (1) remit premiums for the portion of insurance that the credit union provides to all members at no cost and (2) remit premiums on behalf of credit union members who have elected to purchase optional additional insurance. The remittance is paid quarterly to the company after the credit union is furnished with a printout listing the total due from the credit union and each of its members participating in the optional insurance. The credit union apparently is authorized by each member to deduct the optional insurance premium from the member's share account. The credit union then transfers each such payment to its general account and then draws a single credit union draft to cover the total amount due from the credit union under the group plan and from the members under the optional plan.

It appears that the deductions from the accounts would be "preauthorized transfers" as that term is used in section 204.2(e)(6). Consequently, such a transfer would be counted toward the maximum of three transfers per month permitted from a savings deposit or account before it will be considered a transaction account. However, if no more than three transfers, including transfer from the account, can be made during any calendar month or statement cycle of at least four weeks, the account would not be considered a transaction account for purposes of Regulation D and would not be subject to federal reserve requirements.

The last sentence of section 204.2(e)(6) of Regulation D states that an account is not a transaction account "by virtue of an arrangement that permits withdrawals for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer)." This exemption, however, does not apply to transfers to third parties on behalf of depositors or account holders, such as in the arrangement above. STAFF OP. of June 22, 1981.

Authority: 12 CFR 204.2(e)(6).

TRANSACTION ACCOUNTS--Savings Account Allowing Transfers to Agent Institutions

(2-345.12) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Savings Account Allowing Transfers to Agent Institutions

2-345.12

TRANSACTION ACCOUNTS--Savings Account Allowing Transfers to Agent Institutions

A state-chartered, state-insured savings and loan association proposes a savings account in which the depositor may make withdrawals by personal transactions at the office of the association or by specific written request. The depositor may also appoint an agent, or grant a power of attorney to another person or institution authorizing the agent to make withdrawals on the depositor's behalf. Depositors would maintain accounts at other depository institutions and name these institutions as agents with respect to the accounts maintained at the institution proposing the plan, thus allowing the agent to make transfers between the accounts at the various institutions. These arrangements would be considered a preauthorized transfer within the meaning of section 204.2(e)(6) of Regulation D because the agent institution in the proposal would represent the third party to whom payment from the depositor's account is made. STAFF OP. of Dec. 23, 1981.

Authority: 12 CFR 204.2(e)(6).

TRANSACTION ACCOUNTS-- Transfers Through ATMs, RSUs, and CVTs

(2-345.13) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Transfers Through ATMs, RSUs, and CVTs

2-345.13

TRANSACTION ACCOUNTS-- Transfers Through ATMs, RSUs, and CVTs

An account is not a transaction account by virtue of permitting transfers to other accounts of the depositor at the same institution through an automated teller machine (ATM) or remote service unit (RSU). Whether or not an ATM or RSU is owned by the bank at which the account is maintained does not affect these rules. Expanding the number of ATMs or RSUs at which such transactions can be effected does not result in giving customers the degree of convenience normally associated with transactions accounts. Therefore, permitting account holders to transfer funds from a savings account to another account at the same bank through an ATM or check verification terminal of an affiliated bank would not result in the savings account being regarded as a transaction account for purposes of Regulation D. STAFF OP. of Dec. 24, 1981.

Authority: 12 CFR 204.2(e)(4).

TRANSACTION ACCOUNTS-- Preauthorized Transfers to IRA

(2-345.14) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Preauthorized Transfers to IRA

2-345.14

TRANSACTION ACCOUNTS-- Preauthorized Transfers to IRA

A credit union proposes to offer a plan whereby members would authorize the credit union to debit their share deposit accounts and credit their IRA accounts at the credit union with the amount debited. The credit union would effectuate the debits and credits either regularly or at least in a manner such that the member does not have to initiate each particular transaction at the time it occurs. The share account may be a transaction account under section 204.2(e)(6) of Regulation D if the depositor is permitted to make more than three such preauthorized transfers in a calendar month or statement cycle of at least four weeks. STAFF OP. of Feb. 5, 1982.

Authority: 12 CFR 204.2(e)(6).

TRANSACTION ACCOUNTS-- Transfers Exempt from Regulation E

(2-345.15) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Transfers Exempt from Regulation E

2-345.15

TRANSACTION ACCOUNTS-- Transfers Exempt from Regulation E

Question 3-10 of the Official Staff Commentary on Regulation E states that automatic transfers of funds from deposit accounts to pay premiums on group life insurance available only through the depository institution are bona fide intrainstitutional transfers that are exempt from the provisions of Regulation E. Since Regulations D and E serve different purposes, the fact that certain transfers are exempt from Regulation E does not mean that accounts that permit such transfers are exempt from Regulation D. While the transaction does not require application of the consumer protections of Regulation E, the nature of the transaction as a third-party payment is specifically the type of transfer which, when permitted through a deposit account, is intended to subject such an account to the reserve requirements of Regulation D. STAFF OP. of May 14, 1982.

Authority: 12 CFR 204.2(e).

TRANSACTION ACCOUNTS-- CD with Line of Credit

(2-345.16) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- CD with Line of Credit

2-345.16

TRANSACTION ACCOUNTS-- CD with Line of Credit

The question has arisen whether a certificate of deposit that is tied to a line of credit equal in amount to the certificate of deposit is a transaction account if the customer may access the line of credit only by appearing in person at the bank. Because the customer may gain access to the line of credit only by appearing in person at the bank, the certificate of deposit associated with this line of credit would not be a transaction account. STAFF OP. of July 27, 1983.

Authority: 12 CFR 204.2(e)(1)(vii).

TRANSACTION ACCOUNTS-- Withdrawals Through ATM and Transfers Through ATM or POS Terminal

(2-345.17) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Withdrawals Through ATM and Transfers Through ATM or POS Terminal

2-345.17

TRANSACTION ACCOUNTS-- Withdrawals Through ATM and Transfers Through ATM or POS Terminal

Generally, transfers by a customer at an automated teller machine (ATM) from one of the customer's accounts to another at the same depository institution, and ATM withdrawals paid directly to the customer are not counted toward the permissible number of transfers and withdrawals from ordinary savings accounts or money market deposit accounts. It does not matter whether the depository institution owns the ATM, has exclusive use of it, or shares the ATM owned by another entity. However, all transactions involving a transfer of funds from a customer's account to the account of a third party, whether through an ATM or a point-of-sale (POS) terminal, count toward the transfer limit. It is the character of the underlying transfer (that is, whether the payment initiated by the customer is made directly to the customer or the customer's account rather than to a third party or third party's account) that determines whether the transfer counts in distinguishing between a savings and a transaction account. STAFF OP. of July 29, 1986.

Authority: 12 CFR 204.2(d)(2).

This digest has been revised to clarify the original staff response that a transfer from a POS terminal to a third party counts toward the transfer limit.

TRANSACTION ACCOUNTS--ATM Card as Debit Card; POS Transactions

(2-345.18) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- ATM Card as Debit Card; POS Transactions

2-345.18

TRANSACTION ACCOUNTS--ATM Card as Debit Card; POS Transactions

A bank offers an automated teller machine (ATM) access card to its consumer customers to use on a network of ATMs to perform banking transactions affecting their accounts. The card is available to any holder of any consumer deposit account to which there is ATM access, which includes holders of savings, money market deposit, checking, and NOW accounts.

The bank is negotiating a point-of-sale (POS) agreement with an oil company to permit holders of transaction accounts to purchase the oil company's products and services by using ATM cards as debit cards at the oil company's service stations. Only checking and NOW account customers will be authorized to use the ATM card in this manner, and only these transaction accounts will be debited. The computer that will operate the system will be programmed to permit debit card transactions only on checking or NOW accounts, and not on savings or money market deposit accounts.

A potential problem arises when the computer system is down and holders of ATM cards linked to savings accounts and money market deposit accounts attempt to obtain services from the oil company by using their ATM cards as debit cards. The back-up authorization system, the service station operator, and the POS terminal will be unable to identify and reject a purchase transaction involving an ATM card issued on a savings or money market deposit account because the card is not electronically distinguishable from the ATM cards issued on checking or NOW accounts. If a savings account customer, even though previously instructed not to use an ATM card to make service station purchases, attempts to do so while the authorization system is operating off-line, a circumstance which is expected to be exceedingly rare, a POS transaction will result. The bank will implement an ex post monitoring procedure, designed to meet the requirements of section 204.2(d)(2), footnote 5, of Regulation D, to identify such transactions. Any unauthorized transaction will be identified, and the bank will warn the customer that the account agreement has been violated and that, if further unauthorized transactions occur, the ATM card will be cancelled.

In this particular case, although Regulation D generally prohibits withdrawals from a savings deposit made by a debit card, the bank need not reclassify the savings accounts as transaction accounts because it is expected that unauthorized transactions will be rare and appropriate monitoring procedures will be in place. However, if the bank does not make reasonable good faith efforts to monitor unauthorized transactions and prevent future unauthorized transactions, reclassification of the savings accounts and money market deposit accounts will be required. STAFF OP. of July 29, 1986.

Authority: 12 CFR 204.2(d)(1) and (2).

TRANSACTION ACCOUNTS--Bona Fide Cash Management

(2-345.19) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Bona Fide Cash Management

2-345.19

TRANSACTION ACCOUNTS--Bona Fide Cash Management

A depository institution may not net overdrafts in demand deposits or other transaction accounts against demand deposits or other transaction accounts with positive balances when calculating its aggregate transaction accounts for reserve purposes. Overdrafts are properly reflected on the books of the institution as assets in the form of extensions of credit. If overdrafts in accounts could be treated as negative balances and netted against positive balances in other accounts, depository institutions would under-report and under-reserve their aggregate transaction accounts. However, bona fide cash-management arrangements are expected. The staff has been asked whether agreements for bona fide cash-management arrangements may be either oral or written and whether the arrangements may be used with intra-company accounts and with accounts held by affiliated companies.

Depository institutions and their customers have flexibility in establishing multiple accounts for cash-management purposes when funds could be placed in one account. Although such an arrangement does not necessarily require a prior written agreement, a written agreement would help a depository institution establish that a particular arrangement comes within that exception.

Generally, a bona fide cash-management arrangement exists and accounts may be netted for reserve purposes when the depository institution and the customer in effect treat the accounts as a single account and the institution has an unrestricted right to offset against one account to cover overdrafts in another account. Generally, the exception applies only to the related accounts of one depositor or to accounts of related depositors (such as cosigners, family members, and interdependent entities) when all the depositors have unfettered use of the funds in all accounts, the multiple accounts are established for the customers' convenience, and there is no legal impediment to the commingling of funds in the accounts. STAFF OP. of Aug. 14, 1986.

Authority: 12 CFR 204.3(e).

See also 2-306.5 and 2-320.1.

TRANSACTION ACCOUNTS-- Automatic Transfers of Savings

(2-345.2) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Automatic Transfers of Savings

2-345.2

TRANSACTION ACCOUNTS-- Automatic Transfers of Savings

If a member bank owns or uses automatic teller machines (ATMs) that cannot be readily modified to permit direct withdrawals from a savings deposit subject to automatic transfers, an ATM may be used to initiate a withdrawal from a checking account that would result in an automatic transfer from the savings deposit account. The bank must, however, provide alternate means of access to savings deposit accounts subject to ATS, such as effecting a withdrawal by personal appearance at the bank or by telephone. Withdrawal slips for a savings account subject to automatic transfer do not have to be made available in the bank lobby, and a bank may require depositors to request the slips from bank personnel. However, customers should be notified of this fact when the automatic transfer service is authorized.

Member banks are permitted to offer ATS to trusteeships, guardianships, and other personal accounts if the entire beneficial interest in the funds on deposit is held by one or more individuals. The use of a single monthly statement for accounts involved in an ATS plan is permissible; however, the statement should clearly reflect the distinct nature of the two accounts, possibly indicating the beginning and ending balances in each account as well as each withdrawal and transfer effected by the depositor. STAFF OP. of Oct. 27, 1978.

Authority: 12 CFR 204.2(e).

TRANSACTION ACCOUNTS-- Transfers from Savings to Cover NOW Overdrafts

(2-345.21) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Transfers from Savings to Cover NOW Overdrafts

2-345.21

TRANSACTION ACCOUNTS-- Transfers from Savings to Cover NOW Overdrafts

An overdraft protection plan that involves transfers from a savings account to cover overdrafts in a NOW account would not cause the account to be regarded as a transaction account unless more than three transfers can be effected by telephone or through preauthorized arrangement in one calendar month or one monthly billing cycle. STAFF OP. of Sept. 24, 1980.

Authority: 12 CFR 204.2(b)(3) and 204.2(e).

TRANSACTION ACCOUNTS--Point-of-Sale (POS) Terminals

(2-345.22) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Point-of-Sale (POS) Terminals

2-345.22

TRANSACTION ACCOUNTS--Point-of-Sale (POS) Terminals

A company is considering offering a service that will allow a customer to make purchases at a POS location with a debit card (with direct credit to the merchant's account) or with scrip obtained at the POS terminal (with an immediate debit to the customer's account and credit to the merchant's account). The customer would also have the option of exchanging the scrip for cash from that merchant rather than using the scrip to make a purchase from that merchant. Under either arrangement, the customer is in effect making a third-party payment to the merchant. Several questions were raised about the effect of alternative features of the service on the reserve treatment of accounts subject to POS access.

Briefly, allowing access to an ordinary savings account through either the scrip arrangement or the direct debit card transfer arrangement would cause that account to be classified as a transaction account. However, both arrangements can be used with a money market deposit account (MMDA), and the account would not be a transaction account unless the customer is permitted or authorized to make more than three such transactions per month.

Under section 202.2(d)(2)(i) of Regulation D, a savings deposit is not considered a transaction account, even though the depositor is permitted to make up to three withdrawals per month for the purpose of moving funds to another account of the depositor or making payments to third parties, as long as none of the withdrawals or transfers may be made by check, draft, or similar order--including debit card. The definition of "savings deposit" also includes an MMDA from which the depositor is permitted to make up to six withdrawals per month for the purpose of moving funds to another account of the depositor or making payments to third parties, and no more than three of these six transfers may be by check, draft, debit card, or similar order made by the depositor and payable to third parties (§ 204.2(d)(2)(ii)). However, such an account will not meet this definition if the customer is authorized or permitted to make more than six withdrawals or transfers or three third-party payment orders per month. In that case, the account would be considered a transaction account subject to the higher reserves applicable to such accounts (§ 204.2(e)(2)). Consequently, MMDAs used with either the scriparrangement or the debit card arrangement would not be regarded as transaction accounts so long as access by debit card is limited to an aggregate of six withdrawals and transfers per month, with no more than three of the withdrawals or transfers being by check or debit card--including debit card transactions at POS terminals.

Regulation D bases its distinctions between accounts on whether the depositor, by agreement or practice of the depository institution, is permitted or authorized to make such withdrawals or transfers and not on whether the withdrawals or transfers are actually made. Thus, an institution could offer MMDAs with and without POS access. Generally, if any of the depositors with such access are permitted or authorized to exceed the three-per-month limitation, then the Board would consider any account permitting or authorizing such access a transaction account. Footnotes 5 and 6 of Regulation D provide for such monitoring on an ex post basis and for exceptions to the rule for occasional excess transfers. STAFF OP. of Aug. 11, 1986.

Authority: 12 CFR 204.2(d)(2)(i) and (ii), and 204.2(e).

TRANSACTION ACCOUNTS-- Transfers from MMDA to Cover Line of Credit

(2-345.23) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Transfers from MMDA to Cover Line of Credit

2-345.23

TRANSACTION ACCOUNTS-- Transfers from MMDA to Cover Line of Credit

The staff has been asked about the proper treatment of a proposed arrangement consisting of an account intended to qualify as a money market deposit account (MMDA), a demand deposit account, and a line of credit to cover overdrafts in the demand deposit account. Checks drawn on the demand deposit account in excess of the balance would be paid from loan proceeds transferred to the account, and the bank would note a drawing on the line of credit. Once a week, funds from the MMDA would be transferred to cover outstanding balances on the line of credit. The interest rate imposed on drawings on the line of credit would be equal to that paid on the MMDA, adjusted to account for the effect of reserves. The MMDA would secure the line of credit, which would be limited to the amount deposited in the MMDA. If, at the end of a day, there are balances in the demand deposit account in excess of a specified minimum, the excess would be used to pay any amount owed on the line of credit and any excess would be transferred into the MMDA.

Under section 204.2(e)(5) of Regulation D, an account maintained in connection with an arrangement that permits a depositor to obtain credit directly or indirectly through the drawing of checks is a transaction account. The proposed arrangement falls under that section; therefore, the MMDA would be a transaction account subject to a 12 percent reserve requirement because (1) the MMDA would regularly be used to repay the line of credit; (2) interest on the line of credit would be tied to the interest rate on the MMDA; (3) the line of credit would be secured by the MMDA; and (4) drawings on the line of credit would result from overdrafts in a demand deposit account on which the checks were drawn.

The staff has previously stated that a transfer out of an MMDA to repay an extension of credit by a depository institution, where the extension of credit was previously made to cover an overdraft on that MMDA, does not result in a separate transfer countable against the MMDA transfer limits (see 2-342.13). In that case, the transfer giving rise to the overdraft counted as one third-party transfer, and the repayment of the overdraft constituted the repayment of a loan by the depository institution and not a third-party transfer. That opinion did not apply to a prearranged plan linking an MMDA to a line of credit in a situation that would permit the customer to exceed the MMDA transfer limits by writing checks against the line of credit. STAFF OP. of Oct. 3, 1989.

Authority: 12 CFR 204.2(e)(5), 204.2(d)(2)(ii), and 204.5(e).

TRANSACTION ACCOUNTS-- Combined MMDA and Demand Deposit

(2-345.24) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Combined MMDA and Demand Deposit

2-345.24

TRANSACTION ACCOUNTS-- Combined MMDA and Demand Deposit

Several depository institutions were offering an account arrangement to some customers that combined a money market deposit account (MMDA) with a demand deposit. Typically, the depository institution allowed a customer to create overdrafts in a demand deposit during the week and then pay off the aggregate overdraft at the end of the week with one transfer from the MMDA. The rate of interest paid on the money market deposit account equals the rate of interest charged on the overdraft line of credit, and the number of transfers from the MMDA to cover the overdrafts would never exceed the six-per-month limit that applies to automatic interaccount transfers. Thus, the depository institution considered the demand account balance as zero when it calculated its transaction accounts and included the balance in the MMDA in its time deposits when filing Form FR 2900.

Section 204.2(e)(5) was added to Regulation D because arrangements involving time deposits and credit lines are effective substitutes for transaction accounts and provide the opportunity to avoid transaction-account reserve requirements. This section clearly covers this type of account arrangement. Therefore, the arrangement and the way the depository institutions reported the deposits constitute violations of Regulation D. STAFF OP. of July 1, 1991.

Authority: 12 CFR 204.2(e)(5).

TRANSACTION ACCOUNTS-- Transfers from Demand Accounts for Investment Purposes

(2-345.25) Regulation D (Rulings and Opinions): TRANSACTION ACCOUNTS -- Transfers from Demand Accounts for Investment Purposes

2-345.25

TRANSACTION ACCOUNTS-- Transfers from Demand Accounts for Investment Purposes

A bank proposes to provide a service to customers that would involve coordination among the bank, its customers, and an independent trust company organized under state law. Each customer would authorize the bank to transfer the amount above a predetermined level in its demand account to a pooled demand account maintained by the trust company at the bank. At the direction of the customer, the trust company would then place those funds in a variety of investments, including a money market account at the bank and professionally managed money funds. The customer would deal directly with the trust company on all issues involving the invested funds. The bank would not be involved with the funds other than to facilitate the transfer of funds between accounts as directed by the customer or the trust company. Demand-account overdrafts are not anticipated, but if an overdraft did occur, the bank would inform the trust company, which would transfer funds to the customer's account to cover the overdraft.

This trust arrangement is, in effect, substantially similar to an arrangement described in interpretation 12 CFR 204.134 (at 2-287), in which the Board indicated that the arrangement in which customers maintain checking accounts and have excess funds from those accounts swept into commingled time desposits was an arrangement that--

[S]ubstitutes time deposit balances for transaction accounts balances with no practical restrictions on the depositors' access to their funds, and serves no business purpose other than to allow the payment of higher interest through the avoidance of reserve requirements. As the time deposits may be used to provide funds indirectly for the purposes of making payments or transfers to third persons, the Board has determined that the time deposits should be considered to be transaction accounts for purposes of Regulation D.

The staff believes that this interpretation applies to the proposed trust arrangement. STAFF OP. of July 16, 1992.

Authority: 12 CFR 204.2(d)(2), 204.2(e), and 204.134.

See also 2-342.13 and 2-345.23.

TRANSITIONAL ADJUSTMENTS-- U.S. Agency of Foreign Bank

(2-360.11) Regulation D (Rulings and Opinions): TRANSITIONAL ADJUSTMENTS -- U.S. Agency of Foreign Bank

2-360.11

TRANSITIONAL ADJUSTMENTS-- U.S. Agency of Foreign Bank

A two-year phase-in period applies to a U.S. agency of a foreign bank that becomes subject to reserve requirements by virtue of its parent's asset growth above $1 billion. Accordingly, the phase-in schedule that appears in section 204.4(c) would apply, although the specific dates indicated therein should be modified to reflect the date on which the institution's total worldwide consolidated assets surpassed $1 billion. STAFF OP. of Sept. 28, 1981.

Authority: IBA § 7, 12 USC 3105; 12 CFR 204.4(c).

TRANSITIONAL ADJUSTMENTS-- Reorganization of Banking Subsidiaries

(2-360.13) Regulation D (Rulings and Opinions): TRANSITIONAL ADJUSTMENTS -- Reorganization of Banking Subsidiaries

2-360.13

TRANSITIONAL ADJUSTMENTS-- Reorganization of Banking Subsidiaries

After acquiring another bank holding company, a bank holding company (the acquirer) reorganized to integrate the acquired organization's subsidiaries. This integration was accomplished through three simultaneous transactions in which the assets and liabilities of the acquired organization's bank were divided between two banks and a trust company of the acquirer. One part of the transaction required a national bank to purchase the assets and assume some of the branches of the acquired organization's bank, which was a nonmember bank. The acquirer asked whether the acquisition of the assets and deposit liabilities of the branches by the national bank, a member bank, qualifies for treatment under section 204.4 of Regulation D or whether the assets and liabilities must be treated as a de novo branch.

The acquirer should be permitted to treat its deposits acquired from these transactions under the merger rules in section 204.4(e) of Regulation D rather than as new branches. The deposits acquired were formerly subject to an eight-year phase-in as nonmember deposits under section 204.4(a). Further, the regulatory treatment of the transaction by the Comptroller of the Currency is consistent with treating the branch deposits as deposits acquired in a single merger. Therefore, the deposits and other accounts of the acquirer should be allocated in accordance with the procedures set forth in section 204.4(e)(2) and reserves should be calculated accordingly. STAFF OP. of Oct. 23, 1985.

Authority: 12 CFR 204.4(a) and (e). (Prior to April 1, 1986, current section 204.4(e) was 204.4(g).)

TRANSITIONAL ADJUSTMENTS-- Successors to Closed Thrifts

(2-360.14) Regulation D (Rulings and Opinions): TRANSITIONAL ADJUSTMENTS -- Successors to Closed Thrifts

2-360.14

TRANSITIONAL ADJUSTMENTS-- Successors to Closed Thrifts

The Reserve Banks have been treating the reservable liabilities of new thrift institutions that result from supervisory closings of their financially troubled predecessors as though the new thrifts merged with their predecessors under section 204.4(e) of Regulation D, and they have not applied a phase-in or reduction of reserve requirements of the new thrifts. Some new thrifts maintain that supervisory transfers of the assets and liabilities of financially troubled thrifts to the new thrifts should not be treated as mergers or consolidations. Rather, the new thrifts believe they should be treated as de novo institutions subject to a two-year phase-in under section 204.4(c).

The Board staff reviewed the situation and concluded that the Reserve Bank's treatment of these liabilities is proper and required by Regulation D. New thrifts that are created in order to assist in the liquidation of a closed thrift pursuant to section 406(a) of the National Housing Act usually acquire the bulk of the liabilities held by their predecessors at the time of closing and also purchase a comparable amount of assets of, and succeed to certain rights and privileges enjoyed by, their predecessors. Treating these acquisitions under the merger rules maintains the continuity of the reserve base because the new institution succeeds to the reserve requirements of its closed predecessors. Even if these thrifts were considered de novo institutions, they still would not be entitled to a phase-in of reserves because section 204.4(c)(2) requires a de novo institution with $50 million or more in reservable liabilities for any computation period to maintain 100 percent of its required reserves.

The new thrifts, as successors to the closed thrifts and to their low reserve tranches, should maintain appropriate lagged reserves on nonpersonal time deposits reported by the closed banks prior to their closings. At the same time, the new thrifts are entitled to the reserve benefits of the lagged vault cash reported by their predecessors prior to the closings. This is consistent with the treatment of these transactions as consolidations. STAFF OP. of Jan. 3, 1989.

Authority: 12 CFR 204.4(c) and (e).

"U.S. RESIDENT"

(2-362) Regulation D (Rulings and Opinions): "U.S. RESIDENT"

2-362

"U.S. RESIDENT"

Foreign diplomats and employees of international organizations who reside in the United States are considered U.S. residents for purposes of Regulation D. STAFF OP. of Nov. 18, 1981.

Authority: 12 CFR 204.2(s).

See also 12 CFR 204.2(t).

"U.S. RESIDENT"--Resident of Guam

(2-362.1) Regulation D (Rulings and Opinions): "U.S. RESIDENT" -- Resident of Guam

2-362.1

"U.S. RESIDENT"--Resident of Guam

A resident of Guam is not a United States resident for purposes of Regulations D and Q. STAFF OP. of July 17, 1981.

Authority: 12 CFR 204.2(s).

VAULT CASH--In-Transit Exception

(2-365) Regulation D (Rulings and Opinions): VAULT CASH -- In-Transit Exception

2-365

VAULT CASH--In-Transit Exception

A courier company, as agent for a domestic bank, picks up U.S. currency one day each week from banks located overseas for delivery to the domestic bank. The domestic bank's account with each of the foreign banks is debited on the same day the currency is picked up. In one instance, the currency arrived in the city of the domestic bank's head office on the same day, but too late for delivery to the bank's office. Thus, the courier had to store the currency in its own vaults overnight, until delivery could be made the following day. Because the courier was acting as agent for the domestic bank while holding the currency, the question arises whether currency in transit from a foreign depository institution located outside the United States to a domestic depository institution can be treated as vault cash for purposes of the Report of Transaction Accounts, Other Deposits and Vault Cash (Form FR 2900) before the domestic institution receives the cash at its office.

Regulation D defines "vault cash" as U.S. currency and coin owned and held by a depository institution that may, at any time, be used to satisfy depositors' claims. Generally, in order to be classified as vault cash, currency and coin must be in the possession of the reporting institution or in transit from a correspondent depository institution. In addition, in limited cases the staff has determined that depository institutions may count coin and currency held by third parties as vault cash, even though the circumstances are not explicitly covered by the regulation. In answering the questions dealing with vault cash beginning at 2-306.9, the staff relied heavily on the immediate availability of a known amount of cash at known locations in the vicinity of the bank's offices. Further, currency in the hands of nondepository third parties was clearly the reporting bank's currency.

In the case in question, the offshore banks are not depository institutions for purposes of Regulation D, and the domestic bank may not, therefore, rely on the in-transit exception and count the currency held by its contract courier as vault cash. The domestic bank would not know until after the fact whether or not the currency was available. Also, both notification of arrival and actual delivery of the currency to the domestic bank occur the day after the domestic bank's accounts at the foreign banks are debited. Therefore, the earliest the domestic bank may include the currency as vault cash would be upon its actual receipt of currency at one of its banking offices. Allowing the bank to count the currency the day before it actually receives and controls it would amount to an as-of adjustment to vault cash, which is inconsistent with the concept of vault cash. STAFF OP. of Feb. 26, 1985.

Authority: 12 CFR 204.2(k)(1) and (2).

VAULT CASH--In-Transit Exemption

(2-365.1) Regulation D (Rulings and Opinions): VAULT CASH -- In-Transit Exemption

2-365.1

VAULT CASH--In-Transit Exemption

Currency and coin sent by armored carrier from a retail establishment, such as a grocery store, to a depository institution qualifies as cash in transit for purposes of Regulation D. For the currency and coin to apply toward a depository institution's reserve requirements under section 204.3(b), they must qualify as "vault cash" as defined in section 204.2(k). To qualify, currency and coin in transit must be in transit to or from a Federal Reserve Bank or a correspondent depository institution. Here, the currency and coin are in transit from a retail establishment to the depository institution and thus cannot be considered vault cash. STAFF OP. of Sept. 10, 1986.

Authority: 12 CFR 204.2(k).

VAULT CASH--Safekeeping Agreements for Coin and Currency

(2-365.2) Regulation D (Rulings and Opinions): VAULT CASH -- Safekeeping Agreements for Coin and Currency

2-365.2

VAULT CASH--Safekeeping Agreements for Coin and Currency

Bank A proposes to enter into transactions with some of its correspondent banks, some of which may be affiliates of Bank A. Under the proposed transactions, a correspondent bank would sell coin and currency to Bank A, which would credit or cause to be credited the account of the correspondent bank at Bank A or at a Federal Reserve Bank. Bank A and the correspondent bank would enter into a safekeeping agreement whereby the correspondent bank would segregate and hold in its vault the coin and currency that it sold to Bank A. This coin and currency would be owned by Bank A, which would have the right to have the coin and currency on demand. It is anticipated that Bank A would collect the coin and currency at least weekly, but there is no commitment by Bank A to collect the coin and currency on any schedule. Bank A would not collect the coin and currency daily because of the costs of transportation.

The correspondent bank would hold no ownership interest in the coin and currency, would not include the coin and currency on its books, and would not use the coin and currency in meeting its reserve requirements or for other purposes. All correspondent banks from which Bank A would purchase coin and currency would be within one-half day's drive of Bank A. The coin and currency sold by the correspondent banks to Bank A would be coin and currency in excess of the needs of the correspondent banks.

Coin and currency in a vault that is on the premises of another institution and that is rented by the reporting institution may qualify as vault cash if (1) the reporting institution has full rights of ownership of the coin and currency, and books the coin and currency as an asset; (2) the reporting institution has full rights to obtain the coin and currency immediately in order to satisfy customer demands, which requires that the coin and currency be reasonably near the reporting depository institution; and (3) the institution from which the vault is rented does not include the coin and currency as its own vault cash (see 2-307.2). Further, a depository institution may not sell its excess vault cash to another institution for use in satisfying reserve requirements by means of an overnight trust receipt if the selling institution will continue to hold the coin and currency in its vault (see 2-307).

The transaction proposed by Bank A would not result in vault cash for purposes of Regulation D. Implicit in the qualification of off-premises coin and currency as vault cash is the requirement that the depository institution have a legitimate business purpose, other than the reduction of reserves, for maintaining the coin and currency off premises. A business purpose might be shown, for example, if vault cash is kept off premises because the institution owning the vault cash lacks vault facilities or uses the cash in providing cash services to other banks. STAFF OP. of January 31, 1992.

Authority: 12 CFR 204.2(k)(1).

VAULT CASH--Use of to Meet Carryover Deficiencies

(2-365.2) Regulation D (Rulings and Opinions): VAULT CASH -- Use of to Meet Carryover Deficiencies

See 2-320.12.

Regulation Q: Prohibition Against Payment of Interest on Demand Deposits