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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.

(e) *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.

(f) *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.

(g) *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.

[52 FR 47697, Dec. 16, 1987]

§ 204.132 Treatment of loan strip participations.

(a) Effective March 31, 1988, the glossary section of the instructions for the Report of Condition and Income (FFIEC 031–034; OMB control number 7100–0036; available from a depository institution's primary federal regulator) (*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.

(b) 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.

(c) 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 § 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 loan strip facility. Thus, for example, loan strips sold to domestic offices of other depository institutions are exempt from Regulation D under §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.

[53 FR 24931, July 1, 1988]

§ 204.133 Multiple savings deposits treated as a transaction account.

(a) *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 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.

(b) *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 § 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 §204.2(d)(2)) to reclassify or close the account.

(c) *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.

(d) *Examples.* The distinction between appropriate and inappropriate uses of multiple accounts is illustrated by the following examples:

Example 1. (i) 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.

(ii) 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.