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

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

(e) Section 220.4(c)(5) provides that if the creditor, ''acting in good faith in accordance with'' §220.4(c)(1), purchases a security for a customer ''with the understanding that he is to deliver the security promptly to the customer, and the full cash payment is to be made promptly by the customer is to be made against such delivery'', the creditor may at his option treat the transaction as one to which the period applicable under §220.4(c)(2) is not the seven days therein specified but 35 days after the date of such purchase. It will be observed that the application of §220.4 (c)(5) is specifically conditioned on the creditor acting in good faith in accordance with §220.4(c)(1). As noted above, the existence of the arrangements for delayed delivery and payment in the case presented would prevent this condition from being met, since the customer could not be regarded as having agreed to make full cash payment ''promptly''. Furthermore, such arrangements clearly would be inconsistent with the requirement of §220.4(c)(5) that the creditor ''deliver the security promptly to the customer''.

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

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

[22 FR 5954, July 27, 1957]

§§ 220.114–220.116 [Reserved]

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

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

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