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§ 221.6 Exempted transactions.

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

(a) To any bank;

(b) To any foreign banking institution;

(c) Outside the United States;

(d) To an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401);

(e) To any plan lender as defined in § 221.4(a) to finance an eligible plan as defined in § 221.4(b), provided the bank has no recourse to any securities purchased pursuant to the plan;

(f) To any customer, other than a broker or dealer, to temporarily finance the purchase or sale of securities for prompt delivery, if the credit is to be repaid in the ordinary course of business upon completion of the transaction and is not extended to enable the customer to pay for securities purchased in an account subject to part 220 of this chapter;

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

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

§ 221.7 Supplement: Maximum loan value of margin stock and other collateral.

(a) *Maximum loan value of margin stock.* The maximum loan value of any margin stock is fifty per cent of its current market value.

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

(c) *Maximum loan value of options.* Except for options that qualify as margin stock, puts, calls, and combinations thereof have no loan value.

INTERPRETATIONS

§ 221.101 Determination and effect of purpose of loan.

(a) Under this part the original purpose of a loan is controlling. In other words, if a loan originally is not for the purpose of purchasing or carrying margin stock, changes in the collateral for the loan do not change its exempted character.

(b) However, a so-called increase in the loan is necessarily on an entirely different basis. So far as the purpose of the credit is concerned, it is a new loan, and the question of whether or not it is subject to this part must be determined accordingly.

(c) Certain facts should also be mentioned regarding the determination of the purpose of a loan. Section 221.3(c) provides in that whenever a lender is required to have its customer execute a ''Statement of Purpose for an Extension of Credit Secured by Margin Stock,'' the statement must be accepted by the lender ''acting in good faith.'' The requirement of ''good faith'' is of vital importance here. Its application will necessarily vary with the facts of the particular case, but it is clear that the bank must be alert to the circumstances surrounding the loan. For example, if the loan is to be made to a customer who is not a broker or dealer in securities, but such a broker or dealer is to deliver margin stock to secure the loan or is to receive the proceeds of the loan, the bank would be put on notice that the loan would probably be subject to this part. It could not accept in good faith a statement to the contrary without obtaining a reliable and satisfactory explanation of the situation.

(d) Furthermore, the purpose of a loan means just that. It cannot be altered by some temporary application of

the proceeds. For example, if a borrower is to purchase Government securities with the proceeds of a loan, but is soon thereafter to sell such securities and replace them with margin stock, the loan is clearly for the purpose of purchasing or carrying margin stock.

§ 221.102 Application to committed credit where funds are disbursed thereafter.

The Board has concluded that the date a commitment to extend credit becomes binding should be regarded as the date when the credit is extended, since:

(a) On that date the parties should be aware of law and facts surrounding the transaction; and

(b) Generally, the date of contract is controlling for purposes of margin regulations and Federal securities law, regardless of the delivery of cash or securities.

§ 221.103 Loans to brokers or dealers.

Questions have arisen as to the adequacy of statements received by lending banks under §221.3(c), ''Purpose Statement,'' in the case of loans to brokers or dealers secured by margin stock where the proceeds of the loans are to be used to finance customer transactions involving the purchasing or carrying of margin stock. While some such loans may qualify for exemption under §§221.1(b)(2), 221.4, 221.5 or 221.6, unless they do qualify for such an exemption they are subject to this part. For example, if a loan so secured is made to a broker to furnish cash working capital for the conduct of his brokerage business (i.e., for purchasing and carrying securities for the account of customers), the maximum loan value prescribed in §221.7 (the Supplement) would be applicable unless the loan should be of a kind exempted under this part. This result would not be affected by the fact that the margin stock given as security for the loan was or included margin stock owned by the brokerage firm. In view of the foregoing, the statement referred to in §221.3(c) which the lending bank must accept in good faith in determining the purpose of the loan would be inadequate if the form of statement accepted or used by the bank failed to call for answers which would indicate whether or not the loan was of the kind discussed elsewhere in this section.

§ 221.104 Federal credit unions.

For text of the interpretation on Federal credit unions, see 12 CFR 220.110.

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

For text of the interpretation on Arranging for extensions of credit to be made by a bank, see 12 CFR 220.111.

§ 221.106 Reliance in "good faith" on statement of purpose of loan.

(a) Certain situations have arisen from time to time under this part wherein it appeared doubtful that, in the circumstances, the lending banks may have been entitled to rely upon the statements accepted by them in determining whether the purposes of certain loans were such as to cause the loans to be not subject to the part.

(b) The use by a lending bank of a statement in determining the purpose of a particular loan is, of course, provided for by §221.3(c). However, under that paragraph a lending bank may accept such statement only if it is ''acting in good faith.'' As the Board stated in the interpretation contained in §221.101, the ''requirement of 'good faith' is of vital importance''; and, to fulfill such requirement, ''it is clear that the bank must be alert to the circumstances surrounding the loan.''

(c) Obviously, such a statement would not be accepted by the bank in ''good faith'' if at the time the loan was made the bank had knowledge, from any source, of facts or circumstances which were contrary to the natural purport of the statement, or which were sufficient reasonably to put the bank on notice of the questionable reliability or completeness of the statement.

(d) Furthermore, the same requirement of ''good faith'' is to be applied whether the statement accepted by the bank is signed by the borrower or by an officer of the bank. In either case, ''good faith'' requires the exercise of special diligence in any instance in which the borrower is not personally