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margin stock, the loan would be subject to this part in exactly the same way, for example, as a loan subject to this part that became under-margined because of a decline in the current market value of the loan collateral or because of a decrease by the Board in the maximum loan value of the loan collateral.

§ 221.109 Loan to open-end investment company.

In response to a question regarding a possible loan by a bank to an open-end investment company that customarily purchases stocks registered on a national securities exchange, the Board stated that in view of the general nature and operations of such a company, any loan by a bank to such a company should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying margin stock. This would not be altered by the fact that the open-end company had used, or proposed to use, its own funds or proceeds of the loan to redeem some of its own shares, since mere application of the proceeds of a loan to some other use cannot prevent the ultimate purpose of a loan from being to purchase or carry registered stocks.

§ 221.110 Questions arising under this part.

(a) This part governs ''any purpose credit'' extended by a lender ''secured directly or indirectly by margin stock'' and defines ''purpose credit'' as ''any credit for the purpose, whether immediate, incidental, or ultimate, of buying or carrying margin stock, '' with certain exceptions, and provides that the maximum loan value of such margin stock shall be a fixed percentage ''of its current market value.''

(b) The Board of Governors has had occasion to consider the application of the language in paragraph (a) of this section to the two following questions:

(1) *Loan secured by stock.* First, is a loan to purchase or carry margin stock subject to this part where made in unsecured form, if margin stock is subsequently deposited as security with the lender, and surrounding circumstances indicate that the parties originally contemplated that the loan should be so secured? The Board answered that in a case of this kind, the loan would be subject to this part, for the following reasons:

(i) The Board has long held, in the closely related purpose area, that the original purpose of a loan should not be determined upon a narrow analysis of the technical circumstances under which a loan is made. Instead, the fundamental purpose of the loan is considered to be controlling. Indeed, ''the fact that a loan made on the borrower's signature only, for example, becomes secured by registered stock shortly after the disbursement of the loan'' affords reasonable grounds for questioning whether the bank was entitled to rely upon the borrower's statement as to the purpose of the loan. 1953 Fed. Res. Bull. 951 (*See*, § 221.106).

(ii) Where security is involved, standards of interpretation should be equally searching. If, for example, the original agreement between borrower and lender contemplated that the loan should be secured by margin stock, and such stock is in fact delivered to the bank when available, the transaction must be regarded as fundamentally a secured loan. This view is strengthened by the fact that this part applies to a loan ''secured directly or indirectly by margin stock.''

(2) *Loan to acquire controlling shares.* (i) The second question is whether this part governs a margin stock-secured loan made for the business purpose of purchasing a controlling interest in a corporation, or whether such a loan would be exempt on the ground that this part is directed solely toward purchases of stock for speculative or investment purposes. The Board answered that a margin stock-secured loan for the purpose of purchasing or carrying margin stock is subject to this part, regardless of the reason for which the purchase is made.

(ii) The answer is required, in the Board's view, since the language of this part is explicitly inclusive, covering ''any purpose credit, secured directly or indirectly by margin stock.'' Moreover, the withdrawal in 1945 of the original section 2(e) of this part, which exempted ''any loan for the purpose of purchasing a stock from or through a person who is not a member of a national securities exchange . . .'' plainly

implies that transactions of the sort described are now subject to the general prohibition of § 221.3(a).

§ 221.111 Contribution to joint venture as extension of credit when the contribution is disproportionate to the contributor's share in the venture's profits or losses.

(a) The Board considered the question whether a joint venture, structured so that the amount of capital contribution to the venture would be disproportionate to the right of participation in profits or losses, constitutes an ''extension of credit'' for the purpose of this part.

(b) An individual and a corporation plan to establish a joint venture to engage in the business of buying and selling securities, including margin stock. The individual would contribute 20 percent of the capital and receive 80 percent of the profits or losses; the corporate share would be the reverse. In computing profits or losses, each participant would first receive interest at the rate of 8 percent on his respective capital contribution. Although purchases and sales would be mutually agreed upon, the corporation could liquidate the joint portfolio if the individual's share of the losses equaled or exceeded his 20 percent contribution to the venture. The corporation would hold the securities, and upon termination of the venture, the assets would first be applied to repayment of capital contributions.

(c) In general, the relationship of joint venture is created when two or more persons combine their money, property, or time in the conduct of some particular line of trade or some particular business and agree to share jointly, or in proportion to capital contributed, the profits and losses of the undertaking.

(d) The incidents of the joint venture described in paragraph (b) of this section, however, closely parallel those of an extension of margin credit, with the corporation as lender and the individual as borrower. The corporation supplies 80 percent of the purchase price of securities in exchange for a net return of 8 percent of the amount advanced plus 20 percent of any gain. Like a lender of securities credit, the corporation is insulated against loss by retaining the right to liquidate the collateral before the securities decline in price below the amount of its contribution. Conversely, the individual—like a customer who borrows to purchase securities—puts up only 20 percent of their cost, is entitled to the principal portion of any appreciation in their value, bears the principal risk of loss should that value decline, and does not stand to gain or lose except through a change in value of the securities purchased.

(e) The Board is of the opinion that where the right of an individual to share in profits and losses of such a joint venture is disproportionate to his contribution to the venture:

(1) The joint venture involves an extension of credit by the corporation to the individual;

(2) The extension of credit is to purchase or carry margin stock, and is collateralized by such margin stock; and

(3) If the corporation is not a broker or dealer subject to Regulation T (12 CFR part 220), the credit is of the kind described by § 221.3(a).

§ 221.112 Loans by bank in capacity as trustee.

(a) The Board's advice has been requested whether a bank's activities in connection with the administration of an employees' savings plan are subject to this part.

(b) Under the plan, any regular, full-time employee may participate by authorizing the sponsoring company to deduct a percentage of his salary and wages and transmit the same to the bank as trustee. Voluntary contributions by the company are allocated among the participants. A participant may direct that funds held for him be invested by the trustee in insurance, annuity contracts, Series E Bonds, or in one or more of three specified securities which are listed on a stock exchange. Loans to purchase the stocks may be made to participants from funds of the trust, subject to approval of the administrative committee, which is composed of five participants, and of the trustee. The bank's right to approve is said to be restricted to the