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credit throughout the day of the purchase of the fund shares; and

(2) Relax a 1965 Board position in connection with accepting purpose statements by mail.

(c) It is the Board's view that when it is clearly established that a purpose statement supports a purpose credit then such statement executed by the borrower may be accepted by mail, provided it is received and also executed by the lender before the credit is extended.

§ 221.123 Combined credit for exercising employee stock options and paying income taxes incurred as a result of such exercise.

(a) Section 221.4(a) and (b), which provides special treatment for credit extended under employee stock option plans, was designed to encourage their use in recognition of their value in giving an employee a proprietary interest in the business. Taking a position that might discourage the exercise of options because of tax complications would conflict with the purpose of § 221.4(a) and (b).

(b) Accordingly, the Board has concluded that the combined loans for the exercise of the option and the payment of the taxes in connection therewith under plans complying with § 221.4(a)(2) may be regarded as *purpose credit* within the meaning of § 221.2.

§ 221.124 Purchase of debt securities to finance corporate takeovers.

(a) Petitions have been filed with the Board raising questions as to whether the margin requirements in this part apply to two types of corporate acquisitions in which debt securities are issued to finance the acquisition of margin stock of a target company.

(b) In the first situation, the acquiring company, Company A, controls a shell corporation that would make a tender offer for the stock of Company B, which is margin stock (as defined in § 221.2). The shell corporation has virtually no operations, has no significant business function other than to acquire and hold the stock of Company B, and has substantially no assets other than the margin stock to be acquired. To finance the tender offer, the shell corporation would issue debt securities which, by their terms, would be unsecured. If the tender offer is successful, the shell corporation would seek to merge with Company B. However, the tender offer seeks to acquire fewer shares of Company B than is necessary under state law to effect a short form merger with Company B, which could be consummated without the approval of shareholders or the board of directors of Company B.

(c) The purchase of the debt securities issued by the shell corporation to finance the acquisition clearly involves purpose credit (as defined in § 221.2). In addition, such debt securities would be purchased only by sophisticated investors in very large minimum denominations, so that the purchasers may be lenders for purposes of this part. *See* § 221.3(b). Since the debt securities contain no direct security agreement involving the margin stock, applicability of the lending restrictions of this part turns on whether the arrangement constitutes an extension of credit that is secured indirectly by margin stock.

(d) As the Board has recognized, indirect security can encompass a wide variety of arrangements between lenders and borrowers with respect to margin stock collateral that serve to protect the lenders' interest in assuring that a credit is repaid where the lenders do not have a conventional direct security interest in the collateral. *See* § 221.124. However, credit is not ''indirectly secured'' by margin stock if the lender in good faith has not relied on the margin stock as collateral extending or maintaining credit. *See* § 221.2.

(e) The Board is of the view that, in the situation described in paragraph (b) of this section, the debt securities would be presumed to be indirectly secured by the margin stock to be acquired by the shell acquisition vehicle. The staff has previously expressed the view that nominally unsecured credit extended to an investment company, a substantial portion of whose assets consist of margin stock, is indirectly secured by the margin stock. *See* Federal Reserve Regulatory Service 5–917.12. (*See* 12 CFR 261.10(f) for information on how to obtain Board publications.) This opinion notes that the investment company has substantially no assets other than margin stock to