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 mechanics of making the loan, the purpose being to avoid cumbersome procedures.

(c) Loans are secured by the credit balance of the borrowing participants in the savings fund, including stock, but excluding (in practice) insurance and annuity contracts and government securities. Additional stocks may be, but, in practice, have not been pledged as collateral for loans. Loans are not made, under the plan, from bank funds, and participants do not borrow from the bank upon assignment of the participants' accounts in the trust.

(d) It is urged that loans under the plan are not subject to this part because a loan should not be considered as having been made by a bank where the bank acts solely in its capacity of trustee, without exercise of any discretion.

(e) The Board reviewed this question upon at least one other occasion, and full consideration has again been given to the matter. After considering the arguments on both sides, the Board has reaffirmed its earlier view that, in conformity with an interpretation not published in the Code of Federal Regulations which was published at page 874 of the 1946 Federal Reserve Bulletin (*See* 12 CFR 261.10(f) for information on how to obtain Board publications.), this part applies to the activities of a bank when it is acting in its capacity as trustee. Although the bank in that case had at best a limited discretion with respect to loans made by it in its capacity as trustee, the Board concluded that this fact did not affect the application of the regulation to such loans.

§ 221.113 Loan which is secured indirectly by stock.

(a) A question has been presented to the Board as to whether a loan by a bank to a mutual investment fund is ''secured * * * indirectly by margin stock'' within the meaning of § 221.(3)(a), so that the loan should be treated as subject to this part.

(b) Briefly, the facts are as follows. Fund X, an open-end investment company, entered into a loan agreement with Bank Y, which was (and still is) custodian of the securities which comprise the portfolio of Fund X. The agreement includes the following terms, which are material to the question before the Board:

(1) Fund X agrees to have an ''asset coverage'' (as defined in the agreements) of 400 percent of all its borrowings, including the proposed borrowing, at the time when it takes down any part of the loan.

(2) Fund X agrees to maintain an ''asset coverage'' of at least 300 percent of its borrowings at all times.

(3) Fund X agrees not to amend its custody agreement with Bank Y, or to substitute another custodian without Bank Y's consent.

(4) Fund X agrees not to mortgage, pledge, or otherwise encumber any of its assets elsewhere than with Bank Y.

(c) In § 221.109 the Board stated that because of ''the general nature and operations of such a company'', any ''loan by a bank to an open-end investment company that customarily purchases margin stock * * * should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying margin stock'' (purpose credit). The Board's interpretation went on to say that: ''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 * * *.''

(d) Accordingly, the loan by Bank Y to Fund X was and is a ''purpose credit''. However, a loan by a bank is not subject to this part unless: it is a purpose credit; and it is ''secured directly or indirectly by margin stock''. In the present case, the loan is not ''secured directly'' by stock in the ordinary sense, since the portfolio of Fund X is not pledged to secure the credit from Bank Y. But the word ''indirectly'' must signify some form of security arrangement other than the ''direct'' security which arises from the ordinary ''transaction that gives recourse against a particular chattel or land or against a third party on an obligation'' described in the American Law Institute's Restatement of the Law of Security, page 1. Otherwise the word ''indirectly'' would be superfluous, and a regulation, like a statute, must be construed if possible to give meaning to every word.