collateral. The presumption that the debt securities are indirectly secured by margin stock would not apply if there is specific evidence that lenders could in good faith rely on assets other than margin stock as collateral, such as a guaranty of the debt securities by the shell corporation's parent company or another company that has substantial non-margin stock assets or cash flow. This presumption would also not apply if there is a merger agreement between the acquiring and target companies entered into at the time the commitment is made to purchase the debt securities or in any event before loan funds are advanced. In addition, the presumption would not apply if the obligation of the purchasers of the debt securities to advance funds to the shell corporation is contingent on the shell's acquisition of the minimum number of shares necessary under applicable state law to effect a merger between the acquiring and target companies without the approval of either the shareholders or directors of the target company. In these two situations where the merger will take place promptly, the Board believes the lenders could reasonably be presumed to be relying on the assets of the target for repayment.

(g) In addition, the Board is of the view that the debt securities described in paragraph (b) of this section are indirectly secured by margin stock because there is a practical restriction on the ability of the shell corporation to dispose of the margin stock of the target company. *Indirectly secured* is defined in § 207.2(f) of the regulation to include any arrangement under which the customer's right or ability to sell, pledge, or otherwise dispose of margin stock owned by the customer is in any way restricted while the credit remains outstanding. The purchasers of the debt securities issued by a shell corporation to finance a takeover attempt clearly understand that the shell corporation intends to acquire the margin stock of the target company in order to effect the acquisition of that company. This understanding represents a practical restriction on the ability of the shell corporation to dispose of the target's margin stock and to acquire other assets with the proceeds of the credit.

(h) In the second situation, Company C, an operating company with substantial assets or cash flow, seeks to acquire Company D, which is significantly larger than Company C. Company C establishes a shell corporation that together with Company C makes a tender offer for the shares of Company D, which is margin stock. To finance the tender offer, the shell corporation would obtain a bank loan that complies with the margin lending restrictions of Regulation U and Company C would issue debt securities that would not be directly secured by any margin stock. The Board is of the opinion that these debt securities should not be presumed to be indirectly secured by the margin stock of Company D, since, as an operating business, Company C has substantial assets or cash flow without regard to the margin stock of Company D. Any presumption would not be appropriate because the purchasers of the debt securities may be relying on assets other than margin stock of Company D for repayment of the credit.

[51 FR 1781, Jan. 15, 1986]

§ 207.113 Application of the single-credit rule to loan participations.

(a) Amendments to parts 207 and 220, effective October 11, 1991, amended § 207.3(l) of Regulation G and § 221.3(i) of Regulation U of this chapter to permit transfers of loans between different types of lenders. In connection with that rulemaking, comments were received asking the Board to consider the application of the single-credit rule to the purchase of loan participations by lenders and banks who have other outstanding purpose credit with the same borrower.

(b) The single-credit rule (§ 207.3(g) of Regulation G and § 221.3(d) of Regulation U of this chapter), provides in part that ''[a]ll purpose credit extended to a customer shall be treated as a single credit, and all the collateral securing such credit shall be considered in determining whether or not the credit complies with this part.'' If a lender or bank extends purpose credit to a borrower and then purchases a participation in a loan to the same borrower that represents purpose credit secured by margin stock, the single-credit rule requires the aggregation of the two credits. If the borrower pays off one of the two loans, the participating lender or bank is prohibited under the withdrawal and substitutions provision (§ 207.3(i) of Regulation G and § 221.3(f) of Regulation U of this chapter) from allowing the lead lender or bank to release the pro rata share of the collateral pledged for that participation unless the other loan is secured by collateral with sufficient maximum loan value. In addition, the lead lender or bank cannot allow any withdrawals of collateral during the course of the loan without contacting each participant to check on the status of any unrelated purpose credit to that borrower. These administrative burdens discourage the syndication and transfer of purpose loans.

(c) A version of the single-credit rule was incorporated in Regulation U when it was first issued in 1936. The rule assumed a direct relationship between the borrower and the bank. The modern practice of syndication or subsequent resale of participations severs the direct relationship between the borrower and the lender and presents difficulties, as described above, in the further administration of the loans for compliance with the margin regulations.

(d) The Board is of the view that as long as the lead lender or bank has control of the collateral, monitors the entire syndicated loan on a stand-alone basis, and does not allow withdrawals or substitutions unless sufficient collateral remains, participating lenders and banks need not aggregate participations with other unrelated purpose credit they have with the borrower under the single-credit rule.

[56 FR 46228, Sept. 11, 1991]

§ 207.114 Credit to brokers and dealers.

(a) The National Securities Markets Improvement Act of 1996 (Pub. L. 104–290, 110 Stat. 3416) restricts the Board's margin authority by repealing section 8(a) of the Securities Exchange Act of 1934 (the Exchange Act) and amending section 7 of the Exchange Act (15 U.S.C. 78g) to exclude the borrowing by a member of a national securities exchange or a registered broker or dealer ''a substantial portion of whose business consists of transactions with persons other than brokers or dealers'' and borrowing by a member of a national securities exchange or a registered broker or dealer to finance its activities as a market maker or an underwriter. Notwithstanding this exclusion, the Board may impose such rules and regulations if it determines they are ''necessary or appropriate in the public interest or for the protection of investors.''

(b) The Board's margin regulations, Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively), currently contain rules regarding loans to brokers and dealers based on former section 8(a) of the Exchange Act and its interplay with the earlier version of section 7 of the Exchange Act, which instructed the Board to prescribe rules and regulations with respect to the amount of credit that may be extended on any nonexempted security.

(c) The Board has not found that it is necessary or appropriate in the public interest or for the protection of investors to impose rules and regulations regarding loans to brokers and dealers covered by the National Securities Markets Improvement Act of 1996. Consequently, the Board believes that extensions of securities credit that are unregulated under section 7, as amended by the National Securities Markets Improvement Act of 1996, currently are not limited by Regulations G, T and U, notwithstanding any provisions to the contrary, because the provisions of section 7, as amended, supersede conflicting provisions of the Board's regulations.

(d) Section 220.15 of Regulation T (12 CFR 220.15), § 221.4 of Regulation U and the reference in § 221.5(a) of Regulation U (12 CFR 221.5(a)) to ''a member bank and a nonmember bank that is in compliance with § 221.4,'' and the introductory text of § 207.4 of Regulation G (12 CFR 207.4) were all adopted by the Board to implement the requirements of former section 8(a) of the Exchange Act. The Board believes that these sections are without effect in light of the repeal of section 8(a) of the Exchange Act. Brokers and dealers are not restricted as to the type of lender to which they may pledge exchange-traded equity securities as collateral for