

this part except §207.3 (a) and (o) of this part.

(c) *Credit to ESOPs.* A lender may extend and maintain purpose credit without regard to the provisions of this part, except for §§207.3(a) and 207.3(o), if such credit is extended to an employee stock ownership plan (ESOP) qualified under section 401 of the Internal Revenue Code, as amended (26 U.S.C. 401).

[48 FR 35071, Aug. 3, 1983, as amended at 50 FR 26355, June 26, 1985]

**§207.6 Requirements for the List of OTC Margin Stocks.**

(a) *Requirements for inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least \$5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least \$4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such security outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who

are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such a stock, as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list.* Except as provided in paragraph (d) of this section, an OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such security, as determined by the Board, is at least \$2 per share;

(3) The security is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least \$1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5-1 (17 CFR 240.12g5-1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Removal from the list of OTC margin stocks.* The Board shall periodically remove from the list any stock that:

(1) Ceases to exist or of which the issuer ceases to exist, or

(2) No longer substantially meet the provisions of paragraph (b) of this section or §207.2(k).

(d) *Discretionary authority of Board.* Without regard to the other paragraphs of this section, the Board may add to, or omit or remove from, the OTC margin stock list any equity security, if in the judgment of the Board, such action

is necessary or appropriate in the public interest.

(e) *Unlawful representations.* It shall be unlawful for any lender to make, or cause to be made, any representation to the effect that the inclusion of a security on the list OTC margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other communication containing a reference to the Board in connection with the list or securities on that list shall be an unlawful representation.

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

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

(c) *Maximum loan value of options.* Whether they are margin stock or not, puts, calls, and combinations thereof have no loan value.

INTERPRETATIONS

**§207.101 Application to credit committed before February 1, 1968, where funds are disbursed thereafter.**

(a) The Board has been presented with the question whether this part applies to an extension of credit to a corporation under a contract entered into on May 31, 1967, whereby the creditor agreed to purchase notes of the corporation totaling \$150 million in three "closings" to be completed by December 2, 1968. Prior to February 1, 1968, \$132,500,000 was disbursed. The remaining \$16,500,000 was scheduled to be paid on February 21, 1968. It was assumed that the purpose of the credit was to carry stock that is registered on a national securities exchange, and that the credit may become secured by such stock.

(b) This part, which becomes effective March 11, 1968, will apply to credit extended, since (1) on that date the or-

dinary course of business, to purchase or carry registered equity securities, if the credit is secured by such securities. The above-described credit was the subject of an agreement executed prior to February 1, 1968, that bound the parties as to the amount, interest rate, term, and principal conditions of the credit, although some of the funds remained to be disbursed.

(c) The Board concluded that the funds described above, to be extended after February 1, 1968, will be extended pursuant to a firm commitment executed prior to that date. The Board was of the opinion that the date a commitment to extend credit becomes binding should be regarded as the date when the credit is extended, since (1) on that date the parties should be aware of law and facts surrounding the transaction and (2) generally, the date of contract is controlling for purposes of margin regulations and Federal securities law, regardless of the delivery of cash or securities. Accordingly, the Board concluded that this part did not apply to this extension of credit.

[33 FR 4248, Mar. 7, 1968]

**§207.102 When bank in "good faith" has not relied on stock as collateral.**

For text of this interpretation, see §221.117 of this subchapter.

[33 FR 7485, May 21, 1968]

**§207.103 Corporate guaranty of bank loan as extension of credit in the ordinary course of business.**

(a) The Board recently considered the questions whether (1) the guaranty by a corporation of an "unsecured" bank loan to exercise an option to purchase stock of the corporation is an "extension of credit" for the purpose of this part (Regulation G), (2) such a guaranty is given "in the ordinary course of business" of the corporation, as defined in §207.2(b), and (3) the bank involved took part in arranging for such credit on better terms than it could extend under the provisions of Part 221 (Regulation U) of this subchapter.

(b) The Board understood that any officer or employee included under the corporation's stock option plan who wished to exercise his option could obtain a loan for the purchase price of