

(c) Short sale of a nonexempted security, except for a registered nonconvertible debt security or OTC margin bond: 150 percent of the current market value of the security, or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(d) Short sale of an exempted security, registered nonconvertible debt security or OTC margin bond: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted security: 100 percent of the current market value.

(f) Put or call on a security, certificate of deposit, securities index or foreign currency or a warrant on a securities index or foreign currency:

(1) In the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association and registered warrants on a securities index or foreign currency, the amount, or other position (except in the case of an option on an equity security until June 1, 1997), specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of all other puts and calls, the amount, or other position, specified by the maintenance rules of the creditor's examining authority.

[Reg. T, 61 FR 20397, May 6, 1996]

INTERPRETATIONS

§ 220.101 Transactions of customers who are brokers or dealers.

The Board has recently considered certain questions regarding transactions of customers who are brokers or dealers.

(a) The first question was whether delivery and payment under § 220.4(f)(3) must be exactly simultaneous (such as in sight draft shipments), or whether it is sufficient if the broker-dealer cus-

tomers, "as promptly as practicable in accordance with the ordinary usage of the trade," mails or otherwise delivers to the creditor a check in settlement of the transaction, the check being accompanied by instructions for transfer or delivery of the security. The Board ruled that the latter method of setting the transaction is permissible.

(b) The second question was, in effect, whether the limitations of § 220.4(c)(8) apply to the account of a customer who is himself a broker or dealer. The answer is that the provision applies to any "special cash account," regardless of the type of customer.

(c) The third question was, in effect, whether a purchase and a sale of an unissued security under § 220.4(f)(3) may be offset against each other, or whether each must be settled separately by what would amount to delivery of the security to settle one transaction and its redelivery to settle the other. The answer is that it is permissible to offset the transactions against each other without physical delivery and redelivery of the security.

[11 FR 14155, Dec. 7, 1946]

§ 220.102 [Reserved]

§ 220.103 Borrowing of securities.

(a) The Board of Governors has been asked for a ruling as to whether § 220.6(h), which deals with borrowing and lending of securities, applies to a borrower of securities if the lender is a private individual, as contrasted with a member of a national securities exchange or a broker or dealer.

(b) Section 220.6(h) does not require that the lender of the securities in such a case be a member of a national securities exchange or a broker or dealer. Therefore, a borrowing of securities may be able to qualify under the provision even though the lender is a private individual, and this is true whether the security is registered on a national securities exchange or is unregistered. In borrowing securities from a private individual under § 220.6(h), however, it becomes especially important to bear in mind two limitations that are contained in the section.

(c) The first limitation is that the section applies only if the broker borrows the securities for the purpose specified in the provision, that is, "for the purpose of making delivery of such securities in the case of short sales, failure to receive securities he is required to deliver, or other similar cases". The present language of the provision does not require that the delivery for which the securities are borrowed must be on a transaction which the borrower has himself made, either as agent or as principal; he may borrow under the provision in order to relend to someone else for the latter person to make such a delivery. However, the borrowing must be related to an actual delivery of the type specified—a delivery in connection with a specific transaction that has already occurred or is in immediate prospect. The provision does not authorize a broker to borrow securities (or make the related deposit) merely in order that he or some other broker may have the securities "on hand" or may anticipate some need that may or may not arise in the future.

(d) The ruling in the 1940 Federal Reserve Bulletin, at page 647, is an example of a borrowing which, on the facts as given, did not meet the requirement. There, the broker wished to borrow stocks with the understanding that he "would offer to lend this stock in the 'loan crowd' on a national securities exchange." There was no assurance that the stocks would be used for the purpose specified in §220.6(h); they might be, or they might merely be held idle while the person lending the stocks had the use of the funds deposited against them. The ruling held in effect that since the borrowing could not qualify under §220.6(h) it must comply with other applicable provisions of the regulation.

(e) The second requirement is that the deposit of cash against the borrowed securities must be "bona fide." This requirement naturally cannot be spelled out in detail, but it requires at least that the purpose of the broker in making the deposit should be to obtain the securities for the specified purpose, and that he should not use the arrangement as a means of accommodating a customer who is seeking to obtain

more funds than he could get in a general account.

(f) The Board recognizes that even with these requirements there is still some possibility that the provision may be misapplied. The Board is reluctant to impose additional burdens on legitimate transactions by tightening the provision. If there should be evidence of abuses developing under the provision, however, it would become necessary to consider making it more restricted.

[12 FR 5278, Aug. 2, 1947]

§220.104 [Reserved]

§220.105 Ninety-day rule in special cash account.

(a) Section 220.4(c)(8) places a limitation on a special cash account if a security other than an exempted security has been purchased in the account and "without having been previously paid for in full by the customer * * * has been * * * delivered out to any broker or dealer." The limitation is that during the succeeding 90 days the customer may not purchase a security in the account other than an exempted security unless funds sufficient for the purpose are held in the account. In other words, the privilege of delayed payment in such an account is withdrawn during the 90-day period.

(b) The Board recently considered a question as to whether the following situation makes an account subject to the 90-day disqualification: A customer purchases registered security ABC in a special cash account. The broker executes the order in good faith as a bona fide cash transaction, expecting to obtain full cash payment promptly. The next day, the customer sells registered security XYZ in the account, promising to deposit it promptly in the account. The proceeds of the sale are equal to or greater than the cost of security ABC. After both sale and purchase have been made, the customer requests the broker to deliver security ABC to a different broker, to receive security XYZ from that broker at about the same time, and to settle with the other broker—such settlement to be made either by paying the cost of security XYZ to the other broker and receiving from him the cost of security