

agreement accepted by the creditor in good faith that the customer will “promptly” make full cash payment for the security. Accordingly, the Board said that transactions of the kind in question would not qualify as a “bona fide cash transaction” and, therefore, could not properly be effected in a special cash account, unless a contrary conclusion would be justified by the exception in § 220.4(c)(5).

(e) Section 220.4(c)(5) provides that if the creditor, “acting in good faith in accordance with” § 220.4(c)(1), purchases a security for a customer “with the understanding that he is to deliver the security promptly to the customer, and the full cash payment is to be made promptly by the customer is to be made against such delivery”, the creditor may at his option treat the transaction as one to which the period applicable under § 220.4(c)(2) is not the seven days therein specified but 35 days after the date of such purchase. It will be observed that the application of § 220.4(c)(5) is specifically conditioned on the creditor acting in good faith in accordance with § 220.4(c)(1). As noted above, the existence of the arrangements for delayed delivery and payment in the case presented would prevent this condition from being met, since the customer could not be regarded as having agreed to make full cash payment “promptly”. Furthermore, such arrangements clearly would be inconsistent with the requirement of § 220.4(c)(5) that the creditor “deliver the security promptly to the customer”.

(f) Section 220.4(c)(5) was discussed in the Board’s published interpretation, referred to above, which states that “it is not the purpose of (§ 220.4(c)(5)) to allow additional time to customers for making payment. The ‘prompt delivery’ described in (§ 220.4(c)(5)) is delivery which is to be made as soon as the broker or dealer can reasonably make it in view of the mechanics of the securities business and the bona fide usages of the trade. The provision merely recognizes the fact that in certain circumstances it is an established bona fide practice in the trade to obtain payment against delivery of the security to the customer, and the further fact that the mechanics of the trade, unre-

lated to the customer’s readiness to pay, may sometimes delay such delivery to the customer”.

(g) In the case presented, it appears that the only reason for the delay is related solely to the customer’s readiness to pay and is in no way attributable to the mechanics of the securities business. Accordingly, it is the Board’s view that the exception in § 220.4(c)(5) should not be regarded as permitting the transactions in question to be effected in a special cash account.

[22 FR 5954, July 27, 1957]

§§ 220.114–220.116 [Reserved]

§ 220.117 Exception to 90-day rule in special cash account.

(a) The Board of Governors has recently interpreted certain of the provisions of § 220.4(c)(8), with respect to the withdrawal of proceeds of a sale of stock in a “special cash account” when the stock has been sold out of the account prior to payment for its purchase.

(b) The specific factual situation presented may be summarized as follows:

Customer purchased stock in a special cash account with a member firm on Day 1. On Day 3 customer sold the same stock at a profit. On Day 8 customer delivered his check for the cost of the purchase to the creditor (member firm). On Day 9 the creditor mailed to the customer a check for the proceeds of the sale.

(c) Section 220.4(c)(8) prohibits a creditor, as a general rule, from effecting a purchase of a security in a customer’s special cash account if any security has been purchased in that account during the preceding 90 days and has then been sold in the account or delivered out to any broker or dealer without having been previously paid for in full by the customer. One exception to this general rule reads as follows:

* * * The creditor may disregard for the purposes of this subparagraph (§ 220.4(c)(8)) a sale without prior payment provided full cash payment is received within the period described by subparagraph (2) of this paragraph (seven days after the date of purchase) and the customer has not withdrawn the proceeds of sale on or before the day on which such payment (and also final payment of any check received in that connection) is received. * * *