

not permit any withdrawals or substitutions of collateral that would increase such excess; nor could the bank increase the amount of the loan balance unless there was provided additional collateral having a maximum loan value at least equal to the amount of the increase. In other words, as from the date the stock should become registered, the loan would be subject to this part in exactly the same way, for example, as a loan subject to this part that became under-margined because of a decline in the current market value of the loan collateral or because of a decrease by the Board in the maximum loan value of the loan collateral.

[21 FR 1094, Feb. 17, 1956]

§ 221.109 Loan to open-end investment company.

In response to a question regarding a possible loan by a bank to an open-end investment company that customarily purchases stocks registered on a national securities exchange, the Board stated that in view of the general nature and operations of such a company, any loan by a bank to such a company should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying registered stocks. 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, since mere application of the proceeds of a loan to some other use cannot prevent the ultimate purpose of a loan from being to purchase or carry registered stocks.

[23 FR 8945, Nov. 18, 1958]

§ 221.110 Questions arising under Regulation U.

(a) Regulation U governs “any loan” made by a bank “secured directly or indirectly by any stock for the purpose of purchasing or carrying any stock registered on a national securities exchange”, with certain exceptions, and provides that the maximum loan value of such stock shall be a fixed percentage “of its current market value, as determined by any reasonable method.”

(b) The Board of Governors has recently had occasion to consider the ap-

plication of this language to the three following questions:

(1) *Loan secured by stock.* First, is a loan to purchase or carry registered stock subject to Regulation U where made in unsecured form, if stock is subsequently deposited as security with the lending bank, and surrounding circumstances indicate that the parties originally contemplated that the loan should be so secured? The Board answered that in a case of this kind, the loan would be subject to the Regulation, for the following reasons.

(i) The Board has long held, in the closely related *purpose* area, that the original purpose of a loan should not be determined upon a narrow analysis of the technical circumstances under which a loan is made. Instead, the fundamental purpose of the loan is considered to be controlling. Indeed, “the fact that a loan made on the borrower’s signature only, for example, becomes secured by registered stock shortly after the disbursement of the loan” affords reasonable grounds for questioning whether the bank was entitled to rely upon the borrower’s statement as to the purpose of the loan. 1953 Bull. 951.

(ii) Where security is involved, standards of interpretation should be equally searching. If, for example, the original agreement between borrower and bank contemplated that the loan should be secured by registered stock, and such stock is in fact delivered to the bank when available, the transaction must be regarded as fundamentally a secured loan. This view is strengthened by the fact that the regulation applies to a loan “secured directly or indirectly by any stock.”

(2) *Loan to acquire controlling shares.*

(i) The second question is whether the Regulation governs a stock-secured loan made for the business purpose of purchasing a controlling interest in a corporation, or whether such a loan would be exempt on the ground that the Regulation is directed solely toward purchases of stock for speculative or investment purposes. The Board answered that a stock-secured loan for the purpose of purchasing or carrying registered stock is subject to the Regulation, regardless of the reason for which the purchase is made.

(ii) The answer is required, in the Board's view, since the language of the Regulation is explicitly inclusive, covering "any loan * * * secured directly or indirectly by any stock for the purpose of purchasing or carrying any stock registered on a national securities exchange." Moreover, the withdrawal in 1945 of the original section 2(e) of the Regulation, which exempted "any loan for the purpose of purchasing a stock from or through a person who is not a member of a national securities exchange * * *" plainly implies that transactions of the sort described are now subject to the general prohibition of section 1.

(3) *Determination of "current market value."* (i) The third question is how to determine the "current market value" of a block of registered stock which represents a controlling interest in a corporation where the block is purchased at a price in excess of the average of bid and asked prices on the Exchange for the day of the purchase, and also in excess of the average price on the Exchange over recent months, while the parties to the loan, on the other hand, believe the purchase to be a bargain and report opportunities to resell at a price which is higher still. In a case of this kind, the Board believes that the current market value of the block is the price at which the actual purchase was made.

(ii) The Supplement to Regulation U states that current market value shall be determined by "any reasonable method". Regulation T, which, while not controlling, may throw some light on the problem, provides that the current market value of a security "throughout the day of its purchase or sale" shall be "total cost or the net proceeds of its sale." The Board is of the opinion that actual sale price in an arm's length transaction provides the best evidence of value. Particularly in circumstances such as those indicated above, it must be assumed that this price reflects intangible factors including control.

[24 FR 1858, Mar. 14, 1959]

§ 221.111 Purchase-and-sale substitution on same day.

(a) Amendments to part 221, effective June 15, 1959 (24 FR 3867), deal, among

other things, with changes in collateral for a "restricted loan", i.e., a bank loan that exceeds the maximum loan value of the collateral therefor. In connection with those amendments an inquiry has been received as to whether the bank may permit a substitution of collateral for such a loan under the amended part in a case in which the excess of the loan over the maximum loan value is not thereby increased and the substitution occurs in the form of a purchase and sale of collateral, both the purchase and sale orders being executed on the same day.

(b) The bank may permit such a purchase-and-sale substitution under the amended part without additional collateral or reduction in the loan if it reasonably ascertains, and has evidence thereof in its records, that the purchase and sale orders were executed on the same day. The controlling events which must occur on the same day are the executions of the purchase order and sale order, and not the bank's receipt or release of stock certificates. It may be noted that the result is substantially similar to that under the June 15, 1959, amendments to Part 220 of this subchapter. Substitutions that do not involve a same-day purchase and sale are subject to the withdrawal limitations under both parts.

[24 FR 4698, June 10, 1959]

§ 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 221.

(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