

49 F.R. 2211

PROPOSED RULES

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Official Staff Commentary Revision

Wednesday, January 18, 1984

**\*2211** AGENCY: Board of Governors of the Federal System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment a proposed change to the official staff commentary to Regulation Z (Truth in Lending). The commentary **\*2212** applies and interprets the requirements of Regulation Z with regard to consumer credit transactions and is a substitute for individual staff interpretations of the regulation. The proposal addresses the scope of the securities transaction exemption contained in § 226.3(d) of Regulation Z and is intended to clarify its application.

DATE: Comments must be received on or before February 24, 1984.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to the C Street entrance, 20th and C Streets, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments should include a reference to TIL-1. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Ruth R. Amberg, Senior Attorney, or Richard Garabedian, Staff Attorney, in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3667.

SUPPLEMENTARY INFORMATION: (1) General. Effective October 13, 1981, an official staff commentary was published to interpret Regulation Z (12 CFR Part 226). The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. The present proposal is not a general update, but rather a specific proposal addressing the relationship of the securities transaction exemption to consumer asset management accounts. The proposal is being published at this time, rather than with the most recent proposed update (48 FR 54642, December 6, 1983), because the Board's staff is also now publishing for comment a proposed update to Regulation E (Electronic Fund Transfers), some portions of which address the impact of that regulation on consumer asset management accounts. As both Regulations E and Z may be applicable to these accounts, the preparation of comments will be significantly aided if financial service providers can consider the impact of both regulations at the same time. It is expected that if this proposal is adopted it will be issued in final form in March 1984 with optional compliance until the uniform effective date of October 1 for mandatory compliance with commentary revisions.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

(2) Proposed revision. Following is a brief description of the proposed revision to

the commentary:

Subpart A--General

§ 226.3 Exempt transactions.

3(d) Securities or commodities accounts.

This section would be revised to clarify the scope of the exemption for securities or commodities transactions. The need for clarification has arisen largely in the context of consumer financial services that combine transaction and investment features ("consumer asset management accounts") and are offered by brokerage and investment firms.

Consumer asset management accounts permit the consumer to place assets (for example, cash and securities) in one account for the purpose of engaging in consumer transactions, investing excess cash balances in high-yield funds (for example, a money market mutual fund), and buying and selling securities. Typically, if the cash balances and liquidated money market shares are insufficient to pay for the consumer purchase, credit is extended by the broker and such credit is collateralized by securities in the account.

Regulation Z (12 CFR 226.3(d)) provides an exemption for "transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission". The exemption is based on § 104(2) of the Truth in lending Act. The legislative history of the exemption indicates that it was placed in the act to exempt credit extended by a registered broker-dealer for purchasing or carrying securities. The exemption was premised on the Securities and Exchange Commission's adopting regulations requiring credit disclosures substantially similar to those required by the act. In response, the SEC adopted regulations (17 CFR 240.10b-16) requiring detailed disclosure of credit terms in connection with any securities transaction.

The proposed commentary amendment would make clear that credit that is extended by a broker-dealer through a consumer asset management account and is not for a securities transaction--but is for the payment of other goods and services--remains subject to Regulation Z. (Of course, credit extended by broker-dealers for non-securities transactions outside the context of such an account is also subject to the regulation.) Protections comparable to those in Regulation Z (including, for example, error resolution procedures) do not appear to exist for this category of transactions; comment is solicited on this point. The proposal also reflects the relationship between Regulations E and Z in consumer asset management accounts if electronic fund transfers are involved.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

(3) Text of Revision. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets. The proposed revision to the commentary (Supplement I to Part 226) reads as follows:

Supplement I--Official Staff Commentary--TIL-1

Subpart A--General

\* \* \* \* \*

Section 226.3--Exempt Transactions

\* \* \* \* \*

3(d) Securities or Commodities Accounts.

1. Coverage. This exemption does not apply to [a transaction with a broker registered solely with the state or to a separate credit extension in which the proceeds are used to purchase securities.] the following:

A transaction with a broker registered solely with the state.

A separate credit extension in which the proceeds are used to purchase securities.

A transaction that does not involve the purchase or carrying of securities, even if it is processed through a plan that may also be used to purchase or carry securities offered by a registered broker-dealer. For example, under certain types of consumer asset management accounts, a consumer may purchase any number of goods and services that do not involve securities. Payment for such items may be made, in some cases, by credit extend on the maximum loan value of the securities in the plan. Although Regulation Z applies to these non-securities transactions, note that if electronic fund transfers are involved in these plans, Regulation E supersedes provisions of Regulation Z regarding card issuance and liability for unauthorized use, as well as the procedures for resolving errors (except for § 226.13(d) and (g)).

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(15 U.S.C. 1604)

Board of Governors of the Federal Reserve System, January 12, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-1297 Filed 1-17-84; 8:45 am]