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depository institution in a transaction that qualifies as a ''fed funds'' transaction. The 3 percent not transferred to the larger depository institution is the amount of the larger depository institution's deposit that the small depository institution must maintain as transaction account reserves. Because the larger depository institution books this second part of the transaction as a ''fed funds'' transaction, the larger depository institution does not maintain reserves on the funds that it receives back from the small depository institution. As a consequence, the larger depository institution has available for its use 97 percent of the amount transferred to the small depository institution. Had the larger depository institution not entered into the transaction, it would have maintained transaction account reserves of 10 percent on that amount, and would have had only 90 percent of that amount for use in its business.

(d) *Determination*. The Board believes that the practice described above generally is a device to evade the reserves imposed by Regulation D. Consequently, the Board has determined that, in the circumstances described above, the larger depository institution depositing funds in the smaller institution may not take a ''due from'' deduction on account of the funds in the demand deposit account if, and to the extent that, funds flow back to the larger depository institution from the small depository institution by means of a transaction that is exempt from transaction account reserve requirements.

[57 FR 38429, Aug. 25, 1992]

§ 204.136 Treatment of trust overdrafts for reserve requirement reporting purposes.

(a) *Authority*. Under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)), the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

(b) *Netting of trust account balances*. (1) Not all depository institutions have treated overdrafts in trust accounts administered by a trust department in the same manner when calculating the balance in a commingled transaction account in the depository institution for the account of the trust department of the institution. In some cases, depository institutions carry the aggregate of the positive balances in the individual trust accounts as the balance on which reserves are computed for the commingled account. In other cases depository institutions net positive balances in some trust accounts against negative balances in other trust accounts, thus reducing the balance in the commingled account and lowering the reserve requirements. Except in limited circumstances, negative balances in individual trust accounts should not be netted against positive balances in other trust accounts when determining the balance in a trust department's commingled transaction account maintained in a depository institution's commercial department. The netting of positive and negative balances has the effect of reducing the aggregate of a commingled transaction account reported by the depository institution to the Federal Reserve and reduces the reserves the institution must hold against transaction accounts under Regulation D. Unless the governing trust agreement or state law authorizes the depository institution, as trustee, to lend money in one trust to another trust, the negative balances in effect, for purposes of Regulation D, represent a loan from the depository institution. Consequently, negative balances in individual trust accounts should not be netted against positive balances in other individual trust accounts, and the balance in any transaction account containing commingled trust balances should reflect positive or zero balances for each individual trust.

(2) For example, where a trust department engages in securities lending activities for trust accounts, overdrafts

might occur because of the trust department's attempt to ''normalize'' the effects of timing delays between the depository institution's receipt of the cash collateral from the broker and the trust department's posting of the transaction to the lending trust account. When securities are lent from a trust customer to a broker that pledges cash as collateral, the broker usually transfers the cash collateral to the depository institution on the day that the securities are made available. While the institution has the use of the funds from the time of the transfer, the trust department's normal posting procedures may not reflect receipt of the cash collateral by the individual account until the next day. On the day that the loan is terminated, the broker returns the securities to the lending trust account and the trust customer's account is debited for the amount of the cash collateral that is returned by the depository institution to the broker. The trust department, however, often does not liquidate the investment made with the cash collateral until the day after the loan terminates, a delay that normally causes a one day overdraft in the trust account. Regulation D requires that, on the day the loan is terminated, the depository institution regard the negative balance in the customer's account as zero for reserve requirement reporting purposes and not net the overdraft against positive balances in other accounts.

(c) *Procedures.* In order to meet the requirements of Regulation D, a depository institution must have procedures to determine the aggregate of trust department transaction account balances for Regulation D on a daily basis. The procedures must consider only the positive balances in individual trust accounts without netting negative balances except in those limited circumstances where loans are legally permitted from one trust to another, or where offsetting is permitted pursuant to trust law or written agreement, or where the amount that caused the overdraft is still available in a settlement, suspense or other trust account within the trust department and may be used to offset the overdraft.

[57 FR 38429, Aug. 25, 1992]

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

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AUTHORITY: 15 U.S.C. 1693–1693r.

SOURCE: Reg. E, 61 FR 19669, May 2, 1996, unless otherwise noted.

§ 205.1 Authority and purpose.

(a) *Authority.* The regulation in this part, known as Regulation E, is issued by the Board of Governors of the Federal Reserve System pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). The information-collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100–0200.

(b) *Purpose.* This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers.