b. *Dividend reinvestment and stock purchase plans.* In addition to pre-borrowing, commenters such as the NYSE and several broker-dealers suggest that broker-dealers be permitted to borrow securities in order to participate in an issuer's dividend reinvestment and stock purchase plan. These plans allow dividends, and often additional funds, to be used to purchase additional shares of the issuer, usually at a discount from the current stock price. Board staff opinions and SEC enforcement actions have made clear that Regulation T as currently written does not permit the borrowing of securities for this purpose.[30]

The Board is not proposing to include dividend reinvestment and stock purchase plans as a permitted purpose for borrowing securities. Permitting such borrowing would not be consistent with existing Board policy concerning borrowing and lending securities. The Board has permitted securities lending where it is needed for the smooth operation of the securities markets, i.e. short sales and fails to receive securities. This view was echoed by the Group of Thirty when they recommended removing impediments to securities lending to allow delivery of securities. Participation in dividend reinvestment and stock purchase plans does not help the securities markets complete transactions as broker-dealers do not actually want or need possession of the securities. Nevertheless, in light of comments received indicating that many issuers view these programs as a less costly means of raising capital, the Board is soliciting comment on whether section 220.16 of Regulation T should be amended to accommodate these plans.

c. *Other purposes.* The PSA, SIA and a broker-dealer recommend adding repurchase agreements to the list of permitted purposes. Since a repurchase agreement represents the sale of a security with a promise to repurchase it at a later date, a creditor who does not own the security subject to the repurchase agreement is engaging in a short sale and therefore may borrow the security pursuant to section 220.16 of Regulation T.[31]

One broker-dealer believes institutions such as banks and insurance companies should be able to borrow securities from a creditor if they say it is for a permitted purpose. However, Regulation T and the U.S. securities markets in general presume that the borrowing of securities will be effected by the broker-dealer that executes the trade. Permitting an entity other than a broker-dealer to borrow securities for a transaction effected by a broker-dealer would permit circumvention of the Board's margin requirements.

C. Borrowing by Creditors

All of the commenters addressing section 8(a) of the Act, which limits the source of certain loans to broker-dealers to member banks and some nonmember banks, support expansion of the types of lenders described in section 8(a) or a reduction in the types of transactions subject to the restriction. The SEC has recently exempted all listed debt securities from the scope of section 8(a) of the Act,[32] with the result that only loans secured by exchange-traded equity securities are still subject to the restriction.

A wide variety of commenters recommend legislation be introduced to loosen the restrictions of section 8(a). Such legislation is currently pending in Congress.[33]

V. Section-by-Section Explanation of Proposed Changes

Section 220.2 Definitions

The following new definitions are being proposed: *cash equivalent, covered option transaction, exempted securities mutual fund, foreign person, money market mutual fund, non-U.S. traded foreign security, and permitted offset position.* The following definitions would be modified: *escrow agreement, in the money, margin security, OTC margin bond, OTC margin stock, short call or short put, and underlying security.* The definition of in or at the money would be deleted and SEC-approved rules of the appropriate SRO would govern permitted offsets for specialists.

Section 220.3 General Provisions

Section 220.3(e)(4), ''Receipt of funds or securities,'' is used by creditors to temporarily finance the exercise of a customer's employee stock option. The section would be reworded to permit such short-term financing for anyone entitled to receive or acquire any securities pursuant to an SEC-registered employee benefit plan.

Section 220.3(i), ''Variable annuity contracts issued by insurance companies,'' would be deleted, although no substantive change is intended.

Section 220.4 Margin Account

Section 220.4(b) would contain all provisions of section 220.5, except for those covering specific options transactions. The options provisions would be deleted and SEC-approved rules of the SROs would apply to these transactions.

Section 220.4(c) would no longer prohibit a margin excess in a foreign currency subaccount from offsetting a margin deficiency in another foreign currency subaccount.

Section 220.5 Special Memorandum Account

This account would be moved from section 220.6. No substantive changes are proposed.

Section 220.6 Government Securities Account

This account would be moved from section 220.18. No substantive changes are proposed.

Section 220.8 Cash Account

Section 220.8(a), Permissible transactions,'' would be amended in two ways. First, the cash account would recognize industry practice and specifically permit the sale to a customer of any asset on a cash basis. Second, the covered options transactions permitted under section 220.8(a)(3) would be broadened to include any eligible transaction designated by the SEC-approved rules of the SROs.

Section 220.8(b), ''Time periods for payment; cancellation or liquidation,'' would permit creditors to accept full cash payment from customers for the purchase of foreign securities up to one day after the regular way settlement date.

Section 220.11 Broker-Dealer Credit Account

Three substantive changes are being proposed to section 220.11(a), ''Permissible transactions.'' First, foreign broker-dealers would be permitted to use the account for delivery-versus-payment transactions with U.S. broker-dealers. Second, joint back office arrangements would require a reasonable relationship between the owners' equity interest and the amount of business effected or financed by the joint back office. Third, ''prime broker'' arrangements set up under SEC guidelines would be able to use this

commitment fee to a stock lender. See staff opinion of October 22, 1990, FRRS 5–615.18.

[30] Staff Opinions of March 2, 1984, FRRS 5–615.1 and July 6, 1984, FRRS 5–615.01; see also In re RFG Options, SEC Administrative Proceeding File No. 3–6370, September 26, 1988.

[31] As noted in footnote 29, all transactions involving government securities may be effected in the government securities account without regard to other provisions of Regulation T.

[32] SEC Rule 3a12–11, 17 CFR 240.3a12–11, published at 59 FR 55342, November 7, 1994.

[33] H.R. 1062, 104th Cong., 1st Sess.