

COMMISSIONER OF FINANCIAL INSTITUTIONS
GOVERNMENT OF PUERTO RICO

CIRCULAR LETTER 5105-1

September 11, 1994

Eligible Institutions


TO INCORPORATE THE CONCEPTS AND CLARIFICATIONS OF THE CIRCULAR LETTERS ISSUED UNDER REGULATION 3582 THAT REMAIN APPLICABLE UNDER REGULATION 5105

Authority

This Circular Letter is issued pursuant to the provisions of Articles 10(a)(2) and 10(a)(8) of Act No. 4 of October 11, 1985, and Articles 3 and 11 of Regulation 5105.

Exemption from Investments Requirements Provided in Section 6.1 and 6.3

WHEREAS, pursuant to Section 6.5.7 of Regulation 5105, Eligible Funds received in transactions with fixed maturities of five (5) years or more having a fixed rate of interest, or with a rate of interest fixed as a specific percentage of a specific published index on the date of the transaction, are exempt from the investment requirements of Sections 6.1. and 6.3 of Regulation 5105.

 WHEREAS, the scope of the language of Section 6.5.7 of Regulation 5105 may be erroneously interpreted in ways completely inconsistent and contrary to the clear purpose and specific intent of Regulation 5105.

THEREFORE, the Commissioner hereby informs and advises the proper interpretation and reading of Section 6.5.7 of Regulation 5105 as said sections were approved and in effect since September 1, 1994.

1. In order to be considered Eligible Funds received by an Eligible Institution in floating interest transactions "with a rate of interest fixed as a specific percentage of a specific published index on the date of the transaction", all variables must be agreed upon on the date of origination of the transaction. Thus, the interest adjustment period, the applicable specific published index



and the percentage of said index which would be applicable to each interest adjustment period, must be established, agreed and specified upon the date of origination of the transaction.

2. Eligible Funds received by an Eligible Institution in transactions which can be cancelled by any, and/or both of the parties involved in the transactions do not constitute transactions with "fixed maturities", even if upon cancellation of said transactions penalties, such as retention of some or all of the interest accrued during a given period, are imposed under the transaction. Any wording providing for cancellation of the transaction shall disqualify the same from consideration as a transaction with a "fixed maturity".
3. It is obvious that the exemption provided by Section 6.5.7 was adopted as an incentive for long term investment of Eligible Funds by the Exempt Businesses. Therefore, in order for a transaction to be exempt as provided by Section 6.5.7, the Eligible Funds must have been directly received from an Exempt Business in a transaction with a fixed maturity of 5 years or more, and in fact be retained for the full maturity of the transaction. Retirement of Eligible Funds prior to their maturity shall exclude the transaction from the benefits of Section 6.5.7, and shall render the Eligible Institution subject to the full requirements of the Regulation from the date of origination of the transaction.

Compliance with Section 6.3.1

WHEREAS, Section 6.3.1(a) of Regulation 5105 in its first sentence states that:

"For each deposit, Repurchase Agreement or other transaction entered into, renewed or extended after the effective date of this Regulation, the Eligible Institution shall be required to generate additional Eligible Activity, in accordance with the Additional Eligible Activity Table set forth below."

WHEREAS, Section 6.3.1. makes express reference to the "Cost of Eligible Funds" as a percentage of applicable Market Rate (%).

WHEREAS, Section 6.5.3 states in its last sentence:

"For purpose of applying the Additional Eligible Activity Table, the cost of Eligible Funds to the last Eligible Institution in the chain of transfers of such funds shall be deemed to be rate falling within a range in the Eligible Activity Table immediately preceding the range that includes the actual cost of Eligible funds for such institution." (Emphasis added).



THEREFORE, the Commissioner hereby informs and advises the proper interpretation of said Section 6.3.1 of Regulation 5105 as said Section was approved and in effect since September 1, 1994.

1. Section 6.3.1 requires additional investments in Eligible Activities as a function of the effective cost of Eligible Funds received by an Eligible Institution.
2. The interest rate paid by the Eligible Institution on said Eligible Funds which is reported to the Commissioner in the Monthly Report, shall include any and all fees, charges and compensations related to said Eligible Funds, so as to reflect their effective cost to the Eligible Institution.
3. The cost of Eligible Funds referred to in the "stepback" provision of Section 6.5.3 is the effective cost, which must also include any and all fees, charges and compensations related to said Eligible Funds.

Authorization to use Reuters Information Service, Inc. and Knight-Ridder Community News Service, Inc., Under Section 4.2.2

WHEREAS, Reuter Information Services, Inc., and Knight-Ridder Community News Service, Inc., both offer international data system that many Eligible Institutions are presently using in their local and worldwide treasury operations.

THEREFORE, the Commissioner hereby authorizes the Reuters Information Service Inc., and Knight-Ridder Community News Service Inc., as a source of the Applicable Market Rate as defined in Section 4.2.2 of Regulation 5105. The page number designated by Reuters is A-936, and Knight-Ridder are pages 119 and 120. Eligible Institutions may not alternate from one source to the other without the Commissioner's previous written approval.

Public Policy Determination and Interpretive Guideline - Working Capital Loans

WHEREAS, Section 6.2.2(b)(vii) of Regulation 5105, includes in the definition of Eligible Activities, loans:

For working capital purposes, provided that (a) except as otherwise permitted under clause (b), such loan shall not exceed the accounts receivable held an inventory purchased and held by the borrower (or the work in progress or billed fees and disbursements in the case of service companies), reduced by eighty percent (80%) of the cash equivalent and marketable securities (other than, in the case of an exempt business, instruments described in Section 2(j)(1) of the 1987 Act) held by the borrower, during the period the loan in outstanding, and (b) in the case of a



working capital loan for use by an ultimate recipient that has applied for or holds a grant of tax exemption under the Tourism Development Act of 1993, as amended, in connection with a project described in Section 6.3.3(c), the loan may be in such amount and for such periods of time as may be approved by the Commissioner and the Executive Director of the Puerto Rico Tourism Company.

WHEREAS, Section 6.4.2 (General Standards of Due Diligence) includes as one of the factors that must be considered by an Eligible Institution as part of its due diligence investigation "the amount of Eligible Funds to be transferred relative to the needs of the Ultimate Recipient and its proposed use of funds".

THEREFORE, the Commissioner hereby informs and advises that:

A loan of Eligible Funds for working capital purposes should be based on the determination of reasonable needs. The Eligible Institutions should make such determinations considering not only the restrictive formulas provided under Section 6.2.4(b)(vii), but also the clear intention of Article 11 of the Regulation.

For such reason, the accounts payable of the business (those directly related with the operations) and loans financing the inventory and accounts receivable of the borrower that will not be liquidated with the proceeds of the proposed loan, reduce the financing needs of the borrower, therefore, should be subtracted when computing of the needs of Eligible Funds.

Documents Required Under Section 6.4.3

WHEREAS, Section 6.4.3(b)(iii) requires Eligible Institutions to maintain as support of its due diligence a statement (in the form approved by the Commissioner) signed by the Ultimate Recipient acknowledging the receipt of Eligible Funds and describing the Eligible Activity for which the Eligible Funds will be utilized and the collateral to be provided for the transactions, if any.

THEREFORE, the Commissioner hereby advises that the forms approved under the former Circular Letter 3582-I and Circular Letter 3582-II shall continue to be used for the above purposes.

Public Policy Determination and Interpretive Guideline of Regulation 5105

WHEREAS, Article 2(j)(2) of Act No. 8 of January 24, 1987 (the "Act") states that:

"Eligible Funds are to be invested in Puerto Rico in activities that further the goals of increasing production, income and employment in Puerto Rico, such as commercial, industrial, agricultural and construction loans or loans for the preservation of our natural resources. The Act, as amended, also permits the



investment under the terms of Section 936(d)(4) of the United States Internal Revenue Code."

THEREFORE, the Commissioner hereby informs and advises that:

Regulation 5105 was adopted as a means of implementing the above stated policy and should be interpreted accordingly as follows:

Regulation 5105 shall be interpreted in an integrated manner. Therefore, analysis of each section must be made in reference to the above stated policy of furthering production, income and employment in Puerto Rico. A correct interpretation of the Regulation requires full compliance with said policy.

Therefore, transactions or activities that do not comply with the policy requirement of furthering, production, income and employment in Puerto Rico, fall out of the scope of the Act and the Regulation and consequently shall be deemed to be Non-Eligible, despite their apparent compliance with isolated provisions of the Regulation.

Héctor M. Mayol, Jr.
Commissioner

/cd

Encl.

FAVOR DE LEER ANTES DE FIRMAR

**CERTIFICACION DEL PRESTATARIO CONFORME A LA SECCION 6.4.3
DEL REGLAMENTO 5105 REFERENTE A LOS FONDOS 936**

El firmante por este medio reconoce que tiene conocimiento previo a la otorgación de este préstamo, que el mismo se informará a la oficina del Comisionado de Instituciones Financieras como una Actividad Elegible para el uso de Fondos 936:

Fecha: _____ Firma: _____

Prestatario

Los próximos tres (3) apartados serán llenados por la Institución Financiera.

1. Propósito del préstamo: _____
2. Colateral: _____
3. Cantidad: _____ Fechada: _____

Firmado por: _____

Oficial de la Institución Elegible

ELIGIBLE WORKING CAPITAL LOANS

As of month ended on: _____

Inventory	\$ _____
Accounts Receivable	_____
Total	_____
Less:	
80% of Cash & Cash Equivalents	_____
Trade Payable that Will Not be Liquidated with this Advance	_____
W/C Loans (Bank & Others) Excluding this Request (Not to be Liquidated with this Advance)	_____
Eligible Working Capital Advances	_____

We hereby certify as correct the information submitted above. Furthermore, we understand that pursuant to Regulation 5105, we are the "ultimate recipient" of the "Eligible Funds" advanced by the Eligible Institution relying on this information. We agree that said funds shall be used solely for working capital under the above eligibility formula and we understand that, should we utilize said funds for any other purpose, we may be disqualified from future borrowings of "Eligible Funds".

Borrower: _____
Name of Company

Date: _____

By: _____
Name/Title