FEDERAL RESERVE BANK *of* NEW YORK

33 LIBERTY STREET, NEW YORK, NY 10045-0001

BARRY SCHINDLER
FREEDOM OF INFORMATION OFFICER

June 21, 2022

VIA E-MAIL
Emre Kuvvet
Associate Professor of Finance
Nova Southeastern University
ekuvvet@nova.edu

Dear Mr. Kuvvet,

This letter is in response to your letter received on May 23, 2022. Your request is set forth below in relevant part:

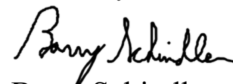
> *"I would like to access the Federal Reserve Bank of New York manual known as the "Doomsday Book". The "Doomsday Book" is a compendium of legal opinions, in some cases stretching back decades, that explore the legal limits of the Federal Reserve in the event of a financial crisis."*

Your request is being treated as a request under the Federal Reserve Bank of New York's (the "New York Fed") Freedom of Information Policy (the "FOI Policy"), a copy of which is available at https://www.newyorkfed.org/aboutthefed/freedom-of-information-requests.html. Please note that the Federal Reserve Bank of New York (the "New York Fed") is not subject to the Freedom of Information Act ("FOIA") although it complies with the spirit of FOIA when responding to requests of this type.

Based on the information you provided, a search was conducted, and attached are two documents consisting of a total of 122 pages that are responsive to your request. Please note that portions of these documents have been redacted as they are exempt from disclosure under exemption 6 of the FOI policy. Additional responsive documents were located but have been withheld as exempt from disclosure under exemption 5 of the New York Fed's FOI Policy.

Information on how to file a request for reconsideration may be found in Section 3.8 of the New York Fed's FOI Policy.

Sincerely,



Barry Schindler
Freedom of Information Officer

DOOMSDAY BOOK

Version: 4.1 INTERNAL FR
Date: June 19, 2006
Compiler: (b) (6)
Editor: (b) (6)

The "Doomsday Book" is a collection of emergency documentation and memoranda compiled by the Legal Department of the Federal Reserve Bank of New York. It has two purposes in mind. First, it is a ready reference source, containing template documents that must be prepared quickly, and background material that is likely to be particularly relevant to an emergency situation. Second, because all of its documents are on CD-ROMs, it is an operational mitigant against the risk of lost power or connectivity. The Doomsday Book, however, assumes working computers and printers.

It is maintained in three forms: a complete paper version (copies kept in the Law Library, Records, and EROC), CD-ROM and paper introductory section (distributed widely through the Legal Department) and on the Legal server (in the "LEGALDOCS" library; "Doomsday Book Materials" folder.)

The complete paper and server versions should always be current, and the complete paper version will contain a current CD-ROM. To ascertain whether a CD-ROM is current, check its version number against that of the complete paper or server versions. (If complete paper and server are unavailable, contact the Editor or the Compiler.) Feel free to copy the current CD-ROM, bearing in mind that some of the memoranda on the CD-ROM are RESTRICTED-F.R.

From time to time, the Compiler will update the Doomsday Book, as the Editor adds additional documentation. The Doomsday Book is not, and can never be a finished product. The Editor is the gatekeeper for all additions and changes to the Doomsday Book. Please contact the Editor for any suggested additions or revisions. (b) (6) and (b) (6) remain available to answer any questions concerning the Doomsday Book.

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NOTES ON CHANGES IN THE LAW SINCE MEMORANDA WERE WRITTEN:

The law constantly evolves. Many of the memoranda in this book, although still useful, are therefore not completely current. The Editor will try to note some of the obsolete legal points in these memoranda. However, unless stated otherwise, please do not take any of these memoranda as advice on current law. A few particularly significant legal developments are noted immediately below, in approximate chronological order:

1. **The five-vote requirement for Section 13(3) discount window lending was relaxed in 2001.** 12 U.S.C. § 248(r)(2) permits action by unanimous Board vote, if fewer than five members of the Board are available.

2. **The Bankruptcy Code has been amended several times since its recodification in 1978.** (A few memoranda date before 1978: use with particular caution.) Significant amendment dates include 1984, 1986, 1990, 1994, 2000, and 2005. None of the memoranda that refer to the Bankruptcy Code should be presumed up-to-date in the details. However, the only major structural change in the Bankruptcy Code since 1978 has been its treatment of financial contracts.

- One significant recent addition to the Bankruptcy Code was made in Pub. L. 106-554, signed by President Clinton on December 21, 2000. Federal Reserve Banks are now "financial institutions" and their liquidation of a securities contract is no longer subject to the automatic stay.
- Most of changes in the 2005 legislation affect consumer bankruptcy, but several are significant to a Federal Reserve Bank:
  - The list of qualified financial contracts in the Code is substantially expanded to include most derivatives, and cross-product netting.
  - United States branches of foreign banks are unambiguously removed from the Bankruptcy Code, and will be relegated to bank insolvency law.
  - The netting provisions of the Payment System Risk Reduction Act are extended to include the DTC.

3. **The European Union's Collateral Directive helps Reserve Banks take an enforceable security interest in securities** on the books of Euroclear and Clearstream. This Directive has not yet been ratified in some of the EU states, and opinion practice is still necessary for cross-border pledges of securities. The Hague Conference Convention in Indirect Holdings of Securities, if ratified, should give further protection to the Federal Reserve for its security interest in securities.

4. **The United Nations Commission on International Trade Laws ("UNCITRAL") promulgated a Convention on "The Assignment of Receivables in International Trade."** This may facilitate the cross-border use of customer loans as collateral. At the time of writing (V4.1), however, the Convention has only been ratified by Liberia and signed by three states: the U.S., Luxembourg, and Madagascar.

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5. **Revised UCC Article 9 is effective.** This revision has a significant effect on the way in which this Bank creates, perfects, and maintains its security interests. Highlights:

- Security interests may now be taken in deposit accounts,
- Filing will perfect a security interest in notes as well as other collateral (this might be the most important single change from a Reserve Bank's perspective),
- The location of filing—especially for foreign and national banks—has been changed,
- Electronic filing and search are encouraged, and are becoming a norm.

6. **The Gramm-Leach-Bliley Act of 1999 repealed old Section 11(m) of the Federal Reserve Act**, which placed limits on bank lending on securities collateral. This repeal could facilitate back-to-back lending arrangements.

7. **Also in 1999, Congress removed the Section 16(2) restrictions on collateralization of Federal Reserve notes**, thus expanding the permissible volume of Section 10B lending authority.

8. **In 1995, the United States Supreme Court significantly expanded the scope of national bank incidental powers.** *NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 513 U.S. 251 (1995). This case, if anything, strengthens the validity of all pre-1995 powers opinions based on the incidental powers of Federal Reserve Banks.

9. **Congress amended Section 13(3) of the Federal Reserve Act in 1991, removing long-standing restrictions on eligible collateral.** Therefore, lending powers memoranda written before 1992 are likely to be misleading in their treatment of Section 13(3). A few such pre-1992 memoranda are nonetheless included.

10. It should be noted that New York has not yet adopted Revised Article 3 of the Uniform Commercial Code. If it does, some aspects of agreements regarding promissory notes might perhaps need to be revisited, although this is not a high priority matter.

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NOTE ON INTELLECTUAL PROPERTY:

Most of the documentation in the Doomsday Book was developed in-house or taken from public sources, and therefore is unrestricted by intellectual property law. However, some of the agreements are copies of model agreements, which often bear a copyright and a copyright restriction. This raises several copyright questions. All information in this note is valid as of January 30, 2004, when I visited the website of the various relevant organizations: ISDA (www.isda.org), the Bond Market Association (www.bondmarket.com), and the FRBNY-sponsored committees (www.ny.frb.org/fmlg). All websites provided unrestricted electronic access to their master agreements and supporting annexes, although ISDA and the Bond Market Association do not give access to all their explanatory documentation. Legal restrictions are another matter.

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Revision History

Version 4.0 (May 10, 2004) to 4.1

Deleted following memorandum:

- Bankruptcy Court's Opinion in *Beogradska* case

  Reason: The opinion was reversed by a published district court opinion (313 B.R. 561 (S.D.N.Y. 2004), which was in turn reversed by Congress in the 2005 bankruptcy amendments.

Added following memoranda and documents:

- (b) (6) to (b) (6), "Avoidances in Insolvency" (#138384) (October 7, 2005)
- "Managing Financial Crisis: A Primer" (#146701) (Fall, 2005) (Principal author: (b) (6) (b) (6))
- FRBNY Authorizing Resolution for the Inter-District, Discount Window Backup Relationship (undated, unexecuted) (Legal_Markets # 2246)
- FRBNY Draft Operational Incapacity Statement (Legal_Markets #2249)
- FRB-SF Authorizing Resolution for the Inter-District, Discount Window Backup (February 28, 2002) (Legal_Markets # 2247)
- Letters from FRBNY to DTC authorizing Buddy Banks (August 16 & 14, 2002) (Legal_Markets #2250)

Deleted following agreements:

- Stone-Age Clearing Agreement (#98724)

  Reason: Physical securities are rare, and no longer play any role in financial markets.

Added following agreements:

- (b) (6) "Draft Nonrecourse Loan Agreement) (June, 2006) (#175344)
- (b) (6), "Credit Considerations, Emergency Lending Agreement" (Legal Markets #4250) (undated; viewed as part of Section 13(3) lending documentation)
- Dollar Pound Swap Agreement (9/14/01; prepared in connection with 9/11/01 operational disruption) (#77254)
- (b) (6) "Medium-Term Exchange Stabilization Agreement" (February, 1995) (#169004)
- (b) (6), Revised OC-10 (~June, 2006) (#138729)

NOTE: The documentation "Emergency Purchase of Securities from Foreign Central Bank" was not in version 4.0, even though it was listed as being there. The documentation appears to be a sanitized version of some simple instructions written from a foreign central bank

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with respect to its securities pool. This document, which was in the Y2K Playbook, contains too little lawyering to be of any value to the Doomsday Book. I have therefore omitted any references to this documentation in version 4.1.

Version 3.3 (October 27, 2000) to 4.0

Deleted following memoranda:

- (b) (6) & (b) (6) to (b) (6), "Contingency planning re: Federal Reserve Credit for Chrysler Financial Corporation" (Draft) (August 17, 1979)

  Reason: This memorandum was primarily concerned with problems of lending under old Section 13(3) of the Federal Reserve Act. It contained a straightforward discussion of filing against chattel paper, and a few words about *pari passu* negative pledge arrangements of which FRBNY had become aware. A discussion of the law of negative pledge arrangements can be found in (b) (6) to (b) (6), "On Lending to a Debtor who Has Previously Executed a Negative Pledge Agreement with a Creditor" (March 25, 1999).
- (b) (6) to (b) (6), "Field Warehousing as a device to perfect a security interest in 'instruments'" (#99007) (December 31, 1974)

  Reason: Field warehousing is still probably permissible under Revised Article 9 (see R9-313), but it remains risky as ever. Revised Article 9, unlike original Article 9, permits a security interest in notes by filing. Like original Article 9, it also permits a short term unfiled nonpossessory security interest for new value. Given these alternatives, there seems to be no reason why a Reserve Bank would ever want to use a risky field warehouse arrangement. Since the case law on field warehousing has probably evolved in the last thirty years, there seemed to be no reason to retain this ancient memorandum.

Added following memoranda:

- (b) (6) to FBO Workgroup, "A Primer on the Liquidation of Collateral" (#96106) (November 24, 2003)
- (b) (6) (CMTF Workgroup), "Evaluation of Excess Treasury Collateral Procedures (#97576) (November 21, 2003)
- (b) (6) to (b) (6) & (b) (6), "Federal Reserve Bank Powers to Provide Overdraft Capacity to Broker-Dealers (October 9, 2002)
- (b) (6), "Chronology of Events at the Federal Reserve Bank of New York After the World Trade Center Attack" (November 20, 2001)
- (b) (6) to Legal Files, Draft "Special Deposits" (August __, 2001)
- (b) (6) to (b) (6), "Lending to DTC—Taking Participants' Security Entitlements as Collateral Under Code" (Draft) (March 2, 2001)
- (b) (6) to (b) (6), "The Legal Consequences of a Money Laundering Conviction for a Financial Institution" (February 9, 2001)
- (b) (6) to Legal Files, "Guarantees and Corporate Law" (January 31, 2001)
- (b) (6) & (b) (6), "Crisis Avoidance, Containment and Control: A Report From the Financial Services Front" (September 5, 2000)

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- (b) (6) to Legal Files, "Section 14(b)(1) Municipal Securities" (September 1, 2000)

- Enforcement Workgroup to (b) (6) and (b) (6), "Enforcement authority under Gramm-Leach-Bliley" (April 25, 2000)
- (b) (6) & (b) (6), "Legislative History of the Provisions of the Federal Reserve Act Relating to the Discount Window and Open Market Operations" (March 21, 2000)
- (b) (6) and (b) (6) to (b) (6), "Impact of a Criminal Conviction on a State Member Bank" (March 13, 2000)
- (b) (6) to (b) (6), "Will a 'Tested Fax Arrangement' be deemed a 'Commercially Reasonable Security Procedure' under UCC Article 4A?" (November 12, 1999)
- (b) (6) to (b) (6), "Domestic Tri-Party Repo," (August 10, 1999)
- (b) (6) to (b) (6) and (b) (6) "Disqualification Provisions Triggered by Conviction of a Financial Institution" (February 5, 1999)
- 63 Federal Register 65693, "Federal Home Loan Bank Standby Letters of Credit (12 C.F.R. §§ 938, 943 (November 30, 1998)
- (b) (6) & (b) (6) "Enforcement Actions Against Banks and Thrifts" (January, 1992)
- (b) (6) & (b) (6) to (b) (6), "Assessment of DIP Financing Risks" (Nov. 11, 1991) (removed from V 3.2 and restored here)
- (b) (6) to (b) (6) "Section 2(a) of the Gold Reserve Act of 1934" (February 4, 1983)

Transferred Following Memorandum from "Powers Memoranda" to "Powers Opinions"

- 63 Federal Register 65693, "Federal Home Loan Bank Standby Letters of Credit (12 C.F.R. §§ 938, 943) (November 30, 1998)
  Reason: This regulation is legally binding, at least on Federal Home Loan Banks.

Deleted following agreements

- (b) (6), Section 13(3) Lending Agreement
  Reason: Superseded by Section 13(3) Long-Form and Short-Form Agreements
- (b) (6), Back-to-Back Lending Agreement
  Reason: The back-to-back lending agreement (PC Docs #98719) was designed as an alternative to Section 13(3) lending, using only Section 10B authority (which includes the power to make non-recourse loans). Before 2002, an alternative to Section 13(3) lending seemed necessary because Section 13(3) lending required consent of at least five governors. This consent might not have been physically possible during some contingency situations. Since the 2001 revisions to Section 11 of the Federal Reserve Act, Board consent now seems physically possible in almost all cases. Another reason for not retaining the back-to-back agreement was that it would need substantial revision to be workable. The current draft of the agreement relies on an event of default to title the collateral to FRBNY; this is probably unacceptable because of the cross-default clauses

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most banks are subject to. The problem could be fixed if Section 10B permits an explicit put option for collateral, which is the economic equivalent of nonrecourse collateralized lending.

- (b) (6), UCC-1 Financing Statement
Reason: Current UCC-1 financing statement is broader, and comports with Revised UCC Article 9. There is no reason to have a financing statement limited to intangibles.

Added following agreements

- Electronic Texts of Operating Circulars
- (b) (6), Federal Home Loan Bank Pledge Agreement (#97918)
- (b) (6), Securities Control Agreement—Entire Account (#77171)
- (b) (6), Securities Control Agreement—Specified Securities (#77225)
- (b) (6), Deposit Account Control Agreement (#86686) (July 15, 2002)
- (b) (6), Section 13(3) Long-Form Agreement (#80703) (January 2, 2002)
- (b) (6) to (b) (6), "Explanation of Form of 13(3) Credit and Security Agreement (January 2, 2002) (#80706) (treated as agreement)
- (b) (6), Section 13(3) Short-Form Agreement (#77694) (October 17, 2001)
- (b) (6) Plaintiff's Memorandum of Law in Support of its Motion for Preliminary Relief (CHIPS Attachment Litigation) (February 6, 2001 Draft)
- FDIC Indemnity Agreement (September 7, 2000)
- Foreign Exchange Committee, Y2K: Best Practice in the Foreign Exchange Market (October 18, 1999)
- Fiscal Agent Letter of Indemnity (December 1, 1997)
- Granville Gold Trust Papers
    - Memorandum to (b) (6) *et al.* from (b) (6) & (b) (6) (b) (6), "FRBNY v. Granville Gold Trust—Temporary Injunction" (January 12, 1995)
    - Order to Show Cause (January 3, 1995)
    - Memorandum of Law in Support of Order to Show Cause (January 3, 1995)

Eliminated distribution list

Reasons: First, the Doomsday Book went from paper to primarily electronic distribution. Second, there seemed to be no particular demand for the Doomsday Book outside of Legal.

Version 3.2 (April 14, 1999) to 3.3:

Revised following agreements:

- Section 13(3) Account Agreement
- Back-to-back lending agreement

Deleted following agreement:

- 4/22/92 ETP Back-to-back lending agreement
Reason: This agreement was supplanted by the May 16, 2000 JHS version.

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Deleted following memorandum:

- (b) (6) to Legal Files, "Interpretive Authority—Reserve Bank Fiscal Agency Powers" (Draft) (May 16, 1997)

    Reason: Found (and added) a far better memorandum on same topic in legal files: (b) (6) & (b) (6) to (b) (6), "Federal Reserve Bank Powers to Provide Nonbank Dealers with Government Securities Clearance Services" (May 4, 1995)

Added following memoranda:

- (b) (6) to (b) (6), "Requirements to Lift an Automatic Stay in an Insolvency Proceeding" (December 24, 1999)
- (b) (6) to (b) (6), "Y2K Emergency Lending to the Chicago Mercantile Exchange" (September 21, 1999)
- (b) (6) to (b) (6), "Y2K Emergency Lending to the BOTCC" (September 21, 1999)
- (b) (6) to (b) (6) & (b) (6), "CME, CBOT, and BOTCC Emergency Powers" (September 7, 1999)
- (b) (6) to (b) (6), "Risk Analysis of Section 13(3) Lending" (August 10, 1999)
- (b) (6) & (b) (6) to (b) (6), "Minimum Documentation Recommendation for Emergency Lending to DIs" (May 7, 1999)
- (b) (6) to (b) (6), (b) (6), (b) (6), (b) (6) (b) (6) & (b) (6), "December 31, 1999 Holiday Project: Summary of Relevant Holiday Laws" (October 9, 1997)
- (b) (6), (b) (6) & (b) (6) to (b) (6), "Mutual Funds Internal & External Borrowing Capacity" (September 27, 1996)
- (b) (6) to (b) (6), "Authority of Reserve Banks to borrow funds denominated by a foreign currency" (May 24, 1996)
- (b) (6) & (b) (6) to (b) (6), "Federal Reserve Bank Powers to Provide Nonbank Dealers with Government Securities Clearance Services" (May 4, 1995)

Added following name to distribution list: (b) (6)
Deleted following names from distribution list: (b) (6)

Version 3.1 (July 13, 1998) to 3.2:

Converted WordPerfect 6.1 versions of agreements to Microsoft Word. Renamed files (which had previously been in DOS format) to take advantage of Windows naming flexibility.

Added following memoranda:

- (b) (6) to (b) (6), "On Lending to a Debtor who Has Previously Executed a Negative Pledge Agreement with a Creditor" (March 25, 1999)
- (b) (6), "Direct Extension of Emergency Credit to a Nonmember Bank or Bank Holding Company on its Own Note" (Jan. 17, 1975)
- (b) (6) and (b) (6) to (b) (6), "Section 13(3)

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Lending Authority Disclosure Requirements" (March 10, 1999)

- (b) (6) to (b) (6), "All-Assets Pledge Risk Assessment" (March 4, 1999)
- (b) (6) to (b) (6) & (b) (6), "Interest Rate on Credit Extensions to IPCs" (Draft, January 29, 1999)
- (b) (6) to Legal Files, "On 'Conduit Lending' by a Federal Reserve Bank Through Another Bank" (January 6, 1999)
- (b) (6) to Legal Files, "Whether a Temporary Perfected Security Interest Lapses Upon Filing of Bankruptcy Petition" (December 10, 1998)
- (b) (6) to (b) (6), "FCM Bankruptcy Regime" (December 7, 1998)
- (b) (6) to (b) (6), "DTC – Power to Pledge Collateral" (July 8, 1998)
- (b) (6) and (b) (6) to (b) (6), (b) (6) & (b) (6) "Options Regarding Closure of Edge Corporation" (July 28, 1994)
- (b) (6) to (b) (6), "FDICIA Section 142 – Discount Window Operations" (April 17, 1992)
- (b) (6) & (b) (6) to (b) (6), "Authority of Federal Reserve Banks to lend Government securities to dealers" (January 29, 1980)

Deleted following memoranda.

- (b) (6) & (b) (6) to (b) (6) and (b) (6), "Reserve Bank extension of credit to a troubled Edge corporation--Allied Bank International" (March 3, 1983)

  Reason: This checklist style document contained little in the way of legal analysis, and is operationally obsolete after the 1991 amendments to Section 13(3).
- (b) (6) to (b) (6), "Reserve Bank's Power to Accept Deposits From Branches and Agencies of Foreign Banks" (Dec. 18, 1995)

  Reason: This memorandum largely duplicated a contemporaneous memorandum from (b) (6) to (b) (6), "Foreign bank branch and agency discount window access" (Jan. 2, 1996). The (b) (6) memorandum had a somewhat greater scope, so was retained.
- (b) (6) to (b) (6), "Required Documents and Procedures for a 13(3) Loan" (April 1, 1994)

  Reason: This checklist-style memorandum referred to the Section 13(3) documentation in versions 3.0 and 3.1 of the Doomsday Book. This documentation has been amended in version 3.2.
- (b) (6) to (b) (6), "Assessment of DIP Financing Risks" (Nov. 11, 1991)

  Reason: The editor did not see lending to a bankrupt nonbank as a plausible use of Federal Reserve facilities. The legal issues are not abstruse, and in the unlikely event that such a lending situation emerges, a Discount Window attorney should be able to replicate the advice in this memorandum "off the cuff."

Added following agreements:

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- Section 13(3) Lending Agreement
- Section 13(3) Account Agreement
- Intangible Collateral Agreement
- Filing Statement for Intangible Collateral Agreement
- Power of Attorney
- Model Parent Guaranty
- OC-10 Letter of Agreement to Secure Guaranty
- Model Subsidiary Guarantee
- User's Guide to Guarantees

Deleted following agreements:

- Section 13(3) Lending Agreement (DISCOUNT.NEW)
  Reason: This old lending agreement was supplanted by a new version.
- All Assets Security Agreement (ASSIGN2.ASS)
  Reason: A separate security agreement is no longer needed, in light of Revised OC-10.
- All Securities Security Agreement (ASSIGN2.SEC)
  Reason: A separate security agreement is no longer needed, in light of Revised OC-10. Furthermore, this agreement was drafted before revision of UCC Article 8, governing security interests in securities.

Reorganization:

- Moved Memorandum from (b) (6) & (b) (6) to (b) (6) "Legislative History of Federal Reserve discount authority under the third paragraph of Section 13 of the Federal Reserve Act" (Jan. 25, 1977) from Section I-A to Section II-D.

Added following names to distribution list: (b) (6)
Deleted following names from distribution list: (b) (6)

Version 3.0 (October 24, 1997) to 3.1:
Added following memoranda:

- (b) (6) to Legal Files, "Is the Power to Establish an Account Incidental to Section 13(3) Lending Authority?" (May 15, 1998)
- (b) (6), untitled (on judgment creditor executing against foreign party account held indirectly with Federal Reserve Bank) (Draft) (Feb. 3, 1998)
- (b) (6) "Effect of New York Superintendent Taking Possession of a Foreign-Bank Branch" (Draft) (Dec. 17, 1997)
- (b) (6) & (b) (6) "Notes on the Prospect of a creditors' standstill" (Draft) (Dec. 16, 1997)
- (b) (6), "Foreign Bank Default—Response" (Draft) (Dec. 15, 1997)
- (b) (6) and (b) (6) to (b) (6) and (b) (6), "Review of the Proposal to Offer the Single-Account Structure to Foreign Banks" (Jan. 30, 1997)
- (b) (6) to Legal Files, "Authority Under Section 10B of the Federal Reserve

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Act to make advances to The Depository Trust Company" (Oct. 8, 1997)

- (b) (6) & (b) (6) to (b) (6) *et al*, "Controlling Creditor Liability" (Oct. 31, 1996)
- (b) (6) to (b) (6), "The Authority of Investment Companies and the SIPC to Borrow and to Pledge Assets" (June 24, 1996)
- (b) (6) to (b) (6) "Vulnerability of the Bank to suit because of assets abroad" (Oct. 27, 1992)
- (b) (6) to (b) (6) "Mutual Insurance Company's ability to pledge its assets to secure a loan" (Mar. 4, 1991)
- (b) (6) to (b) (6), "Risks to a Secured Creditor of Being Oversecured" (Mar. 24, 1987)

Deleted no memoranda.
Neither added nor deleted any agreements, but replaced draft OC10 with printed version.

Added following names to distribution list: (b) (6)
Deleted following names from distribution list: (b) (6)

Reorganization (all in Volume II):

- Moved (b) (6) to Legal Files, "Interpretive Authority—Reserve Bank Fiscal Agency Powers" (Draft) (May 15, 1997) from Section I-B to III-C.
- Abolished old Section III-C ("Branch Closings") and moved its contents (Letter from (b) (6) to (b) (6) on Closing of Branches and Standby Letters of Credit (Jan. 9, 1997)), along with new memos, to a new Section V ("International").

PC Docs Access Information: #151685

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INTRODUCTION

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The Doomsday Book has existed, in various forms, from the early 1990's. It is a compilation of various emergency agreements (including two briefs) and supporting memoranda. Some of the agreements are sanitized and updated versions of past emergency lending agreements. Others have been prepared as part of the Legal Department's contingency planning efforts, and have not yet been used. Similarly, some memoranda are situation-specific; others are general. The contents of the Doomsday Book are confidential information of the Federal Reserve Bank of New York, and protected by the attorney-client privilege.

This introduction first describes the scope and purpose of the Doomsday Book, and then discusses the various individual agreements and memoranda.

I. Scope, Purpose, and Organization

The Doomsday Book is intended to help lawyers of the Federal Reserve Bank of New York aid senior bank officials in crisis management. It is primarily oriented toward crises that require an operational response, such as emergency lending or emergency payments. Because each crisis in unique, the Doomsday Book is not intended as an "off-the-shelf" solution to any particular crisis. Therefore, the Doomsday Book agreements will probably require modification for each crisis. The legal opinions and other memoranda may need fact-specific supplementation. There shall be no "playbook" of general advice, as there was with the Y2K playbook project. However, the Doomsday Book should provide a firm framework upon which crisis-specific modifications may be made. It is intended to save time, when time is a very scarce resource.

The Doomsday Book is also intended to aid contingency planning. By identifying a set of

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legal issues (and solutions), it should raise questions about related issues and solutions. The collected agreements and memoranda in the Doomsday Book should suggest gaps in coverage, and therefore encourage more work along these lines.

The Doomsday Book contains four parts, with the addition of the contact lists to this version. This introductory section is the first part. The contact lists comprise the second part, and—along with the introductory section—are distributed in paper. A third part, widely distributed in CD-ROM, contains the agreements and related operational documentation. The agreements are broadly classed into seven categories: emergency credit agreements, emergency payment agreements, master agreements, closing of a foreign branch or agency, ancillary agreements, public statements, and litigation documents. The ancillary agreements may be used in several of the "substantive" agreements.

The fourth part, also distributed in CD-ROM, contains seven sets of legal memoranda.

- The first set of memoranda is a compilation of powers opinions. These opinions confirm that the Federal Reserve Bank of New York has the legal power to act in various emergency situations: primarily lending and payments. If a contemplated emergency action does not fall within the scope of one of these opinions, it may still be permissible.
- The second set of memoranda consists of a few selected policy pieces, perhaps more useful between financial crises than during crises.
- The third set of memoranda discusses operational issues: prudential constraints on the exercise of Federal Reserve Banks powers. Most of the memoranda discuss security interests; the rest are a miscellany of payment issues, some powers memoranda that do not rise to opinions, and others.
- The fourth set concentrates on the legal risks posed by borrower insolvency, apart from those associated with obtaining a perfected first-priority security interest. These risks can degrade the position of even a well-collateralized lender.
- A fifth set of memoranda concentrates on international issues, notably international bank insolvencies.
- A sixth set discusses enforcement and regulatory issues.
- The final set is a collection of scenarios from the Y2K playbook (whose other contents, where relevant, were merged with the Doomsday Book in Version 4.0.)

We now turn to the agreements.

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II. Agreements

A. *Emergency Credit Agreements*

1. Section 13(3) Lending Agreement with Recourse

Section 13(3) credit can be extended to "individuals, partnerships and corporations." Section 13(3) is the only means through which Discount Window credit can be extended to nonbanks without limitations on type of collateral. It is therefore the residual emergency lending authority. Section 13(3) authority requires special authorization by a supermajority of five members of the Board of Governors, who must find "unusual and exigent circumstances."*

The Section 13(3) lending agreement was most recently rewritten by (b) (6) in late 2001. It is the latest of a long series of rewrites. It had previously been written by (b) (6) (b) (6) in early 1999. It had been earlier rewritten by (b) (6) in 1996, in a form responsive to the 1991 amendments to Section 13(3). (Because of these amendments, the mechanics of Section 13(3) discounting can be very similar to conventional discount-window lending, although a variable interest rate is more difficult to implement.) It originated as a draft prepared by the Subcommittee of Legal Counsel in November, 1988. The (b) (6) rewrite comes in two different forms: a "long form" and a "short form." The short form is probably a better starting point, and is supplemented by an explanatory memorandum. The long form was an earlier attempt. It is preserved in this edition of the Doomsday Book because it is more inclusive, and some of its clauses might be useful in the short form standard.

The Section 13(3) agreement does not contain full ancillary documentation. It does not contain, for example, a sample note, Board of Governors resolution, or affiliate guarantees, which are all provided in the ancillary agreements and public announcements.

In principle, Operating Circular 10 ("OC10") would suffice as a template for loans to nonbanks. The Section 13(3) lending agreement, however, is substantially different from OC10, for several reasons. First, some problems (such as *D'Oench, Duhme* repudiation by the FDIC) simply do not exist for non-depository institutions, and do not require the cumbersome legal protections of OC10. Second, any 13(3) lending is likely to be emergency lending, quite possibly to an institution with whom there had been no previous relationship. In contrast, most credit extended under OC10 is usually in the ordinary course of business, to a well-known and creditworthy counterparty. Therefore, the Section 13(3) agreement contains a very strong menu of legal protections, not all of which are likely to be applicable to any given situation. Finally,

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* 12 C.F.R. § 201.3(d) also requires consultation with the Board of Governors, and a determination by the Federal Reserve Bank that "credit is not available from other sources and failure to obtain such credit would adversely affect the economy." These additional requirements may be waived by an appropriate Section 13(3) resolution, if necessary. Regulation A binds Reserve Banks, not the Board of Governors.

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OC10 lending will be limited to banks, which are subject to bank insolvency law. In contrast, Section 13(3) lending might include entities governed by the Bankruptcy Code, which is generally more hostile to secured creditors.

Because the Section 13(3) agreement is far more specialized to emergency lending than OC-10, it might be worth using a tailored Section 13(3) agreement for emergency lending even to depository institutions. In such a case, the tailored agreement would need to contain *D'Oench, Duhme* language, of the sort provided in OC-10.

2. International Swap Agreements

Section 14 of the Federal Reserve Act empowers Reserve Banks to purchase and sell "cable transfers" "in the open market, at home or abroad, either from or to domestic or foreign banks, firms, corporations, or individuals". Since cable transfers include forward and spot foreign exchange transactions, this section authorizes "swap agreements" with foreign central banks. Such swap agreements, which involve a spot and offsetting forward foreign exchange transaction, are the economic equivalent of a cash-collateralized loan.

We have two specimen swap agreements: the 2001 swap with the Bank of England that emerged out of the September 11 operational event, and a 1995 swap with Mexican entities. The 2001 deal was a straight liquidity deal among central banks. The 1995 swap involved sovereign credit, and used the central banks as fiscal agent. (b) (6) and (b) (6) are probably best acquainted with the details of these agreements.

3. Section 10B† Lending Agreement—Operating Circular 10

Operating Circular 10 contains most of the language needed for any sort of secured lending, and is a good template for lending needs that are not satisfied by other documents in the Doomsday Book. Most major depository institutions have already signed the 1998 version of this operating circular, and may have signed the 2006 version. Some smaller banks, thrifts, credit unions and special-purpose institutions may be eligible for Section 10B lending, but have not yet signed OC 10.

This version of the Doomsday Book contains both the 1998 and 2006 versions of OC10. Many banks will probably not adopt the new 2006 version for some time, so both versions seemed worth keeping.

4. Section 13(13) Lending Agreement

Section 13(13) lending authority employs only limited collateral: obligations of or

† Throughout this discussion, we refer to Section 10B of the Federal Reserve Act as the statutory source of ordinary lending powers. This is true only in part: ordinary discount window credit is also extended under Sections 13(8) and 13A, and could also be extended under Section 13(2). (Until recently, Section 10B collateral was not eligible for Federal Reserve Note collateralization, so Reserve Banks tended to lend on other statutory authority, when possible. *See* Federal Reserve Act Section 16(2).)

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guaranteed by the United States or its agencies. This lending authority can be useful for nonbank government securities dealers. It should be noted that Federal Reserve Banks are authorized to accept ineligible collateral to supplement eligible collateral. *Lucas v. Federal Reserve Bank of Richmond*, 59 F.2d 617 (4th Cir. 1932).

The Section 13(13) lending agreement in the Doomsday Book is similar to an old version of the Section 13(3) lending agreement. Because of statutory differences, it is structured as an advance, rather than a note. The Section 13(13) agreement is retained more as a reference source than a working agreement. Most extensions of credit to nonbanks collateralized by government securities are likely to be structured as repo agreements.

5. Repo Agreement

This is a modified version of the PSA Master Repurchase Agreement of September, 1996. (b) (6) modified it in August, 1997. Such an agreement would not need to be executed if the counterparty were already a primary dealer, who would be automatically subject to a similar agreement.

Although there is no doubt about this Bank's authority to enter into such an agreement, the source of authority for a particular transaction may be ambiguous. A purchase of securities followed by a resale may be authorized by any of Sections 10B, 13(13) or 14 of the Federal Reserve Act. (Section 14 authority requires FOMC approval.) A sale of securities followed by a repurchase is certainly authorized under Section 14. *See* (b) (6) (b) (6) to (b) (6), "Authority to engage in Reverse Repo Agreements" (Apr. 16, 1997). However, such a transaction may also be characterized as securities lending against cash collateral, likely authorized by Sections 10B or 13(13).

Because the Bank's authority to engage in these transactions is undisputed, we do not see the point to deciding precisely which authority is being used in a particular case.

6. Sale of FX Book

This old agreement is probably no longer needed, now that the FDI Act, Bankruptcy Code, and New York Banking Law all treat foreign exchange contracts as "Qualified Financial Contracts", for which netting and closeout agreements are enforceable. Nevertheless, it is included for the sake of reference. This agreement was derived from the Franklin agreement of 1974, as modified in 1991 by (b) (6) and (b) (6) in contemplation of the Bank of New England insolvency.

7. FDIC Indemnity Agreement

This agreement, drafted by (b) (6), has already been executed by the FDIC and the Reserve Banks. It simplifies the insolvency process, allowing the FDIC to pay up to the fair market value of a Reserve Bank's collateral to the Reserve Bank, in exchange for a release of collateral. As part of the payment, the Reserve Bank has a right of indemnification for future losses (*e.g.*, check returns), up to the difference between the fair market value and previous

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payments by the FDIC to the Reserve Bank. This agreement should substantially simplify relations between the FDIC and the Reserve Bank, *if the Reserve Bank is comfortably overcollateralized.*

B. Emergency Payment Agreements

1. Section 13(3) Account Agreement

This agreement was prepared by (b) (6), in March 1999. If this Bank extends emergency credit to a nonbank, it may want the nonbank to have a direct account relationship with it. (The reasons for a direct account relationship are discussed in (b) (6) to Legal Files, "On 'Conduit Lending' by a Federal Reserve Bank Through Another Bank" (Jan. 6, 1999.)) This agreement establishes such an account relationship. It is loosely modeled after OC 1, but—as an emergency agreement—is drafted with a strong set of protections for the Reserve Bank. It was designed to work in conjunction with OC 6 and the Section 13(3) lending agreement.

It is worth noting that, without an on-line relationship, this Bank can probably only process 20-30 outgoing payment orders a day on this account. (The Kansas City and Boston Reserve Banks might be able to process up to 150 payment orders a day.) OC6 contains an optional agreement permitting a third party service provider to process accounts on a Federal Reserve Bank's books.

The current draft of this agreement provides only for a funds account. In version 3.2, the editor expressed a hope that Version 3.3 would also contain an agreement that contemplates securities accounts as well as funds accounts. However, after discussing the strict volume limits on offline transactions with various bank personnel, the editor decided that a securities account agreement was of very low priority.

2. FX DvP Agreement

The current draft was prepared by (b) (6) and (b) (6), and (b) (6), in 1992. It contemplates one party of doubtful credit, a group of counterparties of the party, and a discrete number of currencies (in the draft, dollars, sterling, Deutsche marks, yen, and French and Swiss francs.) To reduce the complexity of the arrangement, the Federal Reserve Bank of New York will deal only with a discrete number of "Participants," who will serve as principals in the transaction, effecting the counterparties' trades with the party of doubtful credit. The Federal Reserve Bank of New York serves as escrow agent, interposing itself between the Participants and the party of doubtful credit. As escrow agent, the Federal Reserve Bank of New York will not release funds to either party until it has been funded (in dollars or foreign exchange, as appropriate) by both parties. Participants are United States institutions, and the party of doubtful credit is presumed to have a New York office. The powers opinion corresponding to this agreement is the memorandum from (b) (6) to (b) (6), "National Bank of Kuwait/Request for Foreign Exchange Clearing Facility" (Sept. 18, 1990).

There is no longer any need for such an emergency agreement, because the CLS Bank conducts such quasi-escrowed transactions on a routine basis. However, the Editor has decided to retain this agreement as a template for similar arrangements in other contexts.

As a technical matter, it is worth noting that this agreement uses "special deposits," which are one of the subjects of the (b) (6) memorandum. Standby letters of credit might be a better-understood alternative to special deposits. A standby letter of credit cannot be attached by third parties (including a receiver), although the proceeds may. *Supreme Merchandise Co. v. Chemical Bank*, 70 N.Y.2d 344, 514 N.E.2d 1358, 520 N.Y.S.2d 734 (1987).

3. Tested Telex Package

This package contains a tested telex authentication agreement (which also works for telefaxes), and a set of procedures. It was designed in contemplation of the Y2K date change, and assumed that SWIFT would somehow be down. It should be useful for contingencies involving either SWIFT or Fedwire, and might bridge the gap between telephone authentication and restoration of full automated messaging services. A relevant memorandum is from (b) (6) (b) (6) to (b) (6), "Will a 'Tested Fax Arrangement' be deemed a 'Commercially Reasonable Security Procedure' under UCC Article 4A?" (Nov. 12, 1999).

C. Master Agreements

Most of these master agreements are promulgated by a recognized trade association or a Federal Reserve Bank of New York-sponsored committee. There is no need to comment on them, except for our prior adversion to the intellectual property issues raised by these agreements. (The discussion of intellectual property also contains the URLs for the appropriate association websites.)

D. Draft Nonrecourse Loan Agreement

This document is not intended to provide cash liquidity support. Instead, it is intended to provide *market* liquidity support, in market crises in which there is a rush to dump assets, rather than acquire cash. In other words, this agreement is intended to provide direct support of asset prices, in events like the market break of 1987, or the crisis of 1998. It does so through nonrecourse lending against bank assets: transactionally equivalent to a purchase of assets with a call option written by the purchaser. This agreement is currently in draft form, and probably needs careful coordination with client areas to finalize.

E. Closing of Branch or Agency

The documentation in this section is taken from the closing of the Daiwa branch in February, 1996, originally drafted by (b) (6) and (b) (6). (b) (6) sanitized this documentation in May, 1997.

Contingent liabilities are a key problem with the closing of a foreign branch or agency. In private law, these liabilities are usually standby letters of credit (see Letter from (b) (6) (b) (6) to (b) (6) on Closing of Branches and Standby Letters of Credit, Jan. 9, 1997.) In the case of Daiwa, these liabilities were criminal fines contemplated by the Justice

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Department. If these liabilities are payable after the branch is shut down, the holder of these United States liabilities will have no United States assets against which to proceed. In the private-law cases, the parties may be able to work problems out on their own, but some kind of collateral facility seems necessary in public law cases. (Under international law, criminal fines are unenforceable abroad, and must be settled out of domestic assets.)

The custody and pledge-deposit agreements of this section are tailored to New York law. In these agreements, the Federal Reserve Bank of New York serves as a passive collateral custodian for the New York Superintendent of Banks, who actually directs post-closing settlement of claims.

F. Ancillary Agreements

1. Promissory Note

A note is apparently no longer required, for Section 10B lending at least. *See* 56 Fed. Res. Bull. 940 (1970); Memorandum from (b) (6) to Legal Files, "Nonrecourse Lending under Section 10B of the Federal Reserve Act" (07/29/97). However, a simple promissory note is included with these ancillary agreements, for possible use in Section 10B or 13(3) lending.

The promissory note was adopted from the language of the promissory note in the old Section 13(13), by (b) (6) in August, 1997. (A promissory note is not included in the current Section 13(3) agreement.) The promissory note has been modified to provide for variable interest rates, a jury waiver, collection costs, and other details. Some language in the original promissory note appears to defeat negotiability and therefore is ~~stricken~~ in the current version. This language may be safely included if negotiability is not important. It should be noted that several of the Borrower's waivers (*e.g.*, protest) will become irrelevant if New York adopts Revised Article 3. However, there is no reason to delete this language at present.

2. Intangibles Collateral Agreements

These documents were drafted by (b) (6) in March, 1999. They seek to grant a perfected blanket-style security interest in all intangibles: accounts, receivables, qualified financial contracts (*e.g.*, swaps, forwards, FX, other derivatives), loans, securities, bank accounts, and the like. Because they supplant the all-assets and all-securities agreements drafted in 1991, the old agreements have been removed.

a. Intangible Collateral Agreement

This agreement is prepared as a collateral schedule to OC-10. It could be readily adapted to a Section 13(3) or other lending agreement. Note that it contains references to after-acquired collateral and proceeds. The agreement assumes that the debtor is located in New York. This assumption will not necessarily be the case, especially after Revised UCC Article 9 becomes effective on July 1, 2001.

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b. UCC-1 Financing Statement

Many of the forms of collateral in the collateral agreement require a financing statement, to be filed in the public filing office. The financing statement is prepared as an attachment to the UCC-1 that would have to be filed.

3. Power of Attorney

In secured lending, the secured creditor is often in possession of collateral. To perfect its security interest or otherwise protect itself, it may have to do things to the collateral, such as supply the debtor's endorsement to certificates in blank, or receive payments from third parties. A power of attorney permits a secured creditor to take such acts as it needs to realize on or protect its interest in collateral. This power of attorney was drafted by (b) (6), in March, 1999.

4. Guarantee Agreements

All of the documents in this subsection were drafted by (b) (6), in March, 1999.

a. Model Parental Guarantee

A parental guarantee is commonplace in the world of secured lending. Such a guarantee serves as a useful source of collateral. Furthermore, a guarantee (especially a parental guarantee) mitigates risks posed by interaffiliate transactions. This guarantee consists of a conditional promise to pay (like any guarantee), coupled with a security agreement on parental assets that supports the guarantee.

A standby letter of credit would be an alternative way of accomplishing the same goal. It would be legally more simple and stronger than a guarantee, albeit perhaps at the cost of flexibility.

b. Letter of Agreement to Secure Guarantee

This document serves to secure the model guarantee with the assets of the guarantor.

c. Model Subsidiary Guarantee

This document serves the same function as the parent guarantee, except it applies to subsidiaries of a bank. (It should be noted that some United States banks do not have the power of granting guarantees. This should be no problem for nonbank subsidiaries.)

d. User's Guide to Guarantees

This document might be moved to the memoranda section when Version 4.1 of the Doomsday Book is released. There may be other user's guides, as well.

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5. Treasury Fiscal Agent Letter of Indemnity

This letter derives from a late 1997 letter from Treasury, indemnifying FRBNY for its fiscal agency work with respect to Nazi gold claims. The indemnity language might be useful in future emergency fiscal agency functions.

6. Buddy Bank Documentation

Under some circumstances, a Reserve Bank might be incapable of operation—particularly in extending discount window credit. The buddy bank documentation (which has been executed) ensures that other Reserve Banks are able to act for the incapacitated Reserve Bank, as agents. The Editor decided to keep copies of the executed documentation in the Doomsday book, as well as a draft operational incapacity operation that could activate a buddy bank.

G. *Public Statements*

1. Foreign Exchange Committee, Y2K: Best Practice in the Foreign Exchange Market

This document is drafted to address Y2K operational failures that may trigger close-out provisions in foreign exchange contracts. It recommends a 3-day cool-off period, in which parties do not exercise their default rights, and points out that parties need not exercise their default rights even after the period has expired. This document may be useful, even outside of Y2K or the foreign exchange markets. It was carefully drafted to straddle the line between moral suasion and antitrust violation, and such drafting could be useful in any emergency "best practices" document. The New York Fed's antitrust immunity remains uncertain (see United States Postal Service v. Flamingo Industries (USA) Ltd. 540 U.S. 736 (2004)), as is the antitrust liability of any co-issuer of a best practices statement.

2. New York Bank Holiday

This bank holiday proclamation was originally drafted in August, 1990, in response to the Con Ed power failure. It has been generalized to respond to operational failures in general. With small changes in wording, this proclamation can be adapted to other bank holidays. For a brief discussion on the law of bank holidays, see (b) (6) to (b) (6), (b) (6), (b) (6), (b) (6), "December 31, 1999 Holiday Project: Summary of Relevant Holiday Laws" (October 9, 1997).

3. Section 13(3) Resolution by Board of Governors

This resolution was taken from the original November, 1988 Section 13(3) draft lending agreement, and slightly modified by (b) (6) in 1997, and again in 2004 (to accommodate the 2001 revision to the Federal Reserve Act authorizing emergency quora). In earlier versions of the Doomsday Book, it was part of the Section 13(3) agreement. This version treats

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it as an ancillary "public statement." This classification as a public statement is for convenience. The Board need not publicly disclose such a resolution. *See* Memorandum from (b) (6) (b) (6) and (b) (6) to (b) (6) "Section 13(3) Lending Authority Disclosure Requirements (March 10, 1999.)

4. Emergency Lending Resolution by Board of Directors

The provenance of this resolution is the same as the 13(3) resolution. The determination in this resolution is required by Regulation A for emergency lending under either Sections 13(3) or 13(13) of the Federal Reserve Act. 12 C.F.R. § 201.3(d) (1997). The language of this document is drafted for Section 13(3) lending. If the first "whereas" clause is stricken and the obvious modifications made, it should also be appropriate for Section 13(13) lending. To the extent that Regulation A contemplates emergency lending under Section 10B authority, this document should also be appropriate.

5. Book-Entry Securities Resolution

(b) (6) drafted this resolution in 1992 in response to the Salomon situation. The Secretary of the Treasury's authority to permit the Federal Reserve Bank of New York to create a securities account for a nonbank is pursuant to Section 15 of the Federal Reserve Act. It has been revised in 1997 to clarify and strengthen the Secretary of the Treasury's authority. *See* memorandum from (b) (6) to Legal Files, "Interpretive Authority--Reserve Bank Fiscal Agency Powers" (May 16, 1997.)

6. Request for Section 13(3) Authority

This document was borrowed from (b) (6), of the Federal Reserve Bank of Kansas City. The editor believes that it was a draft proposal, written in February, 1999, to be submitted to SCRRM. It seems to provide a reasonable basis for a Section 13(3) request, but should not be treated as anything other than a drafting aid.

H. Brief

The memorandum of law, drafted by (b) (6), is specifically designed for one problem: an intraday attachment of the CHIPS account with FRBNY. Much of the analysis in this memorandum of law draws upon a draft memorandum in the Doomsday Book from (b) (6) (b) (6) to Legal Files, "Special Deposits" (August __, 2001.) Other background to this memorandum of law came from the attempted garnishment by Granville Gold Trust of accounts kept with FRBNY.

III. Discussion of Memoranda

This section is an introduction to the memoranda. They vary widely in function. Some of them are legal opinions of Bank powers. Others are advisory. Yet other memoranda can be viewed as the "legislative history" of specific agreements, and help interpret the agreements and place them in context. Finally, some memoranda are included because they are good background reading.

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These memoranda have different intended audiences. The powers memoranda are written "for the record." Their main function is documentary rather than advisory: to establish that this Bank is careful to avoid acting outside the scope of its legal powers, even in emergency situations.

The advisory memoranda are not so much intended "for the record," but rather to provide a framework of legal advice to those acting in emergencies. Of course, they cannot provide advice tailored to a situation unimagined when these memos were written. However, these advisory memos can provide a general basis from which more fact-specific advice can be offered. Some of these memos are very technical, intended primarily for lawyers. Others are more in the nature of lawyer-client communications.

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A. Powers Opinions

The powers opinions discuss the legal authority of Federal Reserve Banks to provide various kinds of emergency services and facilities that they are not in the habit of providing under ordinary circumstances. These powers opinions generally do not discuss the policy advisability of exercising the emergency powers. Nor do they counsel clients on how to provide such facilities with maximum safety to this Bank. They only answer the prior question: "*can* the Bank do it?" They do not answer: "*should* the Bank do it?" or even "*how* should the Bank do it?"

Many of these powers opinions were drafted in response to specific emergency situations, but some of them are responsive to general contingency planning concerns. Unless otherwise stated, they do not represent outer limits to the Bank's powers. These opinions are divided into four categories: lending authority, access to Federal Reserve services, foreign exchange, and miscellaneous.

The lending authority opinions are the most important. A constant theme runs through them all: the powers of a Federal Reserve Bank are far greater than is commonly supposed. The following bullet points capture the headlines of these opinions:

- Reserve Banks may extend Section 10B credit on a non-recourse basis. This permits back-to-back Section 10B lending, perhaps as an alternative to Section 13(3) discounting. (The need for this has decreased with the 2001 amendments to the Federal Reserve Act that relaxed the Board quorum requirement for Section 13(3) discounting.) This power also permits Reserve Banks to provide price support in a panicking market, by extending nonrecourse loans based solely on collateral. This is tantamount to purchasing the collateral, with a repurchase option: an effective means of price support.

- Section 13(3) lending has fewer constraints than one might think.
    - The Board can pre-authorize a Reserve Bank to lend under Section 13(3) at the Reserve Bank's discretion, without disclosing this pre-authorization to the public.
    - Section 13(3) lending to banks might be permissible, *without* the liability scheme imposed by Section 10B, as amended by FDICIA.
    - Section 13(3) lending authority extends to municipalities. (There is no opinion on file extending this result to states or foreign governments.) There is also an independent Section 14(b)(1) lending authority for municipalities.
    - Section 13(3) credit may be extended to Federal Home Loan Banks, notwithstanding language in Section 14(b)(2) of the Federal Reserve Act.
    - Section 13(3) credit can be extended on the note of the obligor. (This has been generally accepted since the (b) (6) memo of 1975, but it is useful to have a copy of the memo on hand.)

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- FRBNY's repo business is authorized by the Federal Reserve Act. This includes reverse and tri-party repo transactions.

The access opinions are important, addressing a frequently-contemplated contingency: direct access of securities firm to Reserve Bank payment facilities. They both conclude that such access is or can be permissible. Another access opinion discusses a routine power: foreign bank access to discount window facilities.

One foreign exchange opinion discusses this Bank's Section 14 power to establish a FX clearing facility. This particular power may no longer be useful, given the CLS Bank. However, as a precondition to finding the Section 14 power to establish a clearing facility, this opinion establishes that a Reserve Bank may accept special deposits, as well as nondollar deposits. The other foreign exchange opinion, discussing foreign-currency borrowings, is more limited in scope.

Three unique powers opinions are lumped together as "miscellaneous." One opinion formally discusses this Bank's power to act as receiver of an Edge Corporation upon appointment by the Board of Governors. This opinion may be unnecessary today, in light of the Board's broad power to define the incidental powers of a Reserve Bank. *See* NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co., 513 U.S. 251 (1995). Another opinion discusses the Bank's power to deal in gold. The third opinion does not facially pertain to Federal Reserve Banks, but holds that Federal Home Loan Banks have the power to issue standby letters of credit. The Editor believes that the reasoning of this opinion is just as likely to apply to Reserve Banks that might need to issue a contingent liability.

Two draft memoranda concern emergency Bank powers, but are not categorized in this section, because they are not polished legal opinions. One draft suggests that, incidental to Section 13(3) lending authority, the Bank may open a temporary account for the debtor. The other draft suggests that Section 15 authorizes the Treasury to authorize a Federal Reserve Bank to create emergency fiscal services. (*See* Section III-C ("Powers Memoranda (Not Opinions))").

B. History and Policy

The Doomsday Book places very little emphasis on the appropriate role of the Federal Reserve in emergency situations. Most of the documents focus on "how to," rather than "why." The memoranda included in this section are therefore exceptional, and deserve special mention.

1. "Managing Financial Crisis: A Primer"

The title of this document is descriptive. It was prepared primarily by (b) (6) aimed at a general audience of junior bank officers. It contains valuable historical data, as well as a solid primer on crisis management.

2. "Chronology of Events at the Federal Reserve Bank of New York after the

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World Trade Center Attack"

The title of this memorandum is fully descriptive. It begins with the morning of September 11, 2001 and concludes with the full resumption of operations on September 24. It discusses all significant events: financial, operational, and humanitarian.

3. "Crisis Avoidance, Containment and Control: A Report from the Financial Services Front"

This is an article on crisis management, containing descriptions of crises over the last 20 years or so. It places heavy stress on communication, decision-making, and the role of legal considerations. It uses the anticipated Y2K crisis as a case study in contingency planning.

4. Legislative History of the Provisions of the Federal Reserve Act Relating to the Discount Window and Open Market Operations

This memorandum should be viewed as an adjunct to Howard Hackley's book: *Lending Functions of the Federal Reserve Banks: A History* (1973). It contains substantial additions to Hackley's work, particularly on open-market operations, post-1973 events and the legislative history of the Federal Reserve Act.

5. "Interest Rate on Credit Extensions to IPCs"

This memorandum briefly discusses the history of Federal Reserve interest rates on extensions of credit made under Sections 13(3) and 13(13) of the Federal Reserve Act. It suggests, in footnote, that the Federal Reserve might not be able to discriminate by kind of borrower. "[S]ection 14(d) specifies that discount rates be set 'for each class of paper.' Setting different rates by type of borrower may conflict with the intent of section 14(d)." This conclusion does not seem compelled by the statutory language. "Class of paper" seems to refer to the class of paper *discounted*. No paper is discounted in Section 13(13); an advance is made. Section 13(3) does contemplate the discount of paper, but the paper discounted will generally be the paper of the borrower, rather than third-party paper. Therefore, setting different rates by type of borrower is setting rates for each class of paper. (These observations do not constitute a formal legal opinion, but it should be noted that the author of this memorandum is not a Board lawyer.)

6. "Origin of the Federal Reserve's Discount Window"

This memorandum is a brief history of the Discount Window before around 1970. It is complementary to Howard Hackley's book, *Lending Functions of the Federal Reserve Banks: A History* (1973.) Hackley's book discusses the legal sources of many of the emergency powers of the Federal Reserve Banks. The memorandum builds on Hackley's treatment, but primarily seeks to recreate the intellectual currents that animated Congress when it created these powers.

7. "Solvent Institutions"

This document discusses a significant concern that emerged only in the 1970's: lending to insolvent institutions. This problem was particularly salient in the wake of the Franklin failure, and remained important throughout the 1980's and early 1990's. In its 1991 FDICIA amendments to the Federal Reserve Act, Congress amended Section 10B to make lending to

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insolvent institutions much more difficult. However, Congress did not prohibit the practice, and provided a mechanism whereby Federal Reserve Banks can still lend to insolvent institutions on a fully-secured basis. *See* (b) (6) to Legal Files, "Sections 10B and 13(3) of the Federal Reserve Act" (Feb. 26, 1997).

8. Legislative History

Because Section 13(3) is the Federal Reserve's basic grant of emergency nonbank lending power, its legislative history is useful. Much of the legislative history is contained in Howard Hackley's book. This memorandum contains some additional information.

C. *Operational Issues*

The memoranda of the third section discuss legal aspects of operational issues, and are probably mostly of interest to attorneys.

1. Security Interests

The memoranda here deal with various technical aspects of obtaining and perfecting security interests. Insolvency and enforcement of security interests is the topic of another subsection. There are few memoranda on UCC Article 9 *per se*. The memoranda of the last century are largely inapplicable, having been supplanted by Revised Article 9, promulgated in 1999 and effective July 1, 2001. Over the last five years, Reserve Bank attorneys have produced few formal Article 9 memoranda. Therefore, the Doomsday Book does not provide much help in straight Article 9 issues, and there is no adequate substitute for consulting an Article 9 attorney: (b) (6) or (b) (6). (b) (6) is knowledgeable about all operational details.

Some memoranda discuss the problems of the "all-assets pledge." In emergency lending, time is short and the lender is not likely to know its debtor well. Therefore, the parties will often not be able to perform due diligence or specify the collateral accurately in advance. The "all-assets pledge" is a tempting way out of this problem, with the debtor agreeing to pledge all of its assets, whatever they may be. However, it is not without risk.

One memorandum highlights some problems with the enforcement of interstate security interests: a problem inherent in the competing laws of fifty states. For foreign branches (and possibly state-chartered branches), it is uncertain whether security interests will be enforced if the bank liability is in one state but the property securing the liability is in another. (b) (6) (b) (6) and (b) (6) to (b) (6) and (b) (6), "Review of the Proposal to Offer the Single-Account Structure to Foreign Banks" (Jan. 30, 1997).

Not all entities have unlimited power to pledge their assets. Insurance and investment companies are well-known examples. The ability of a New York mutual insurance company to pledge its assets is discussed in a memorandum from (b) (6) to (b) (6), "Mutual Insurance Company's ability to pledge its assets to secure a loan" (Mar. 4, 1991). Investment companies (and SIPC) are discussed in a memorandum from (b) (6) to (b) (6), "The

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Authority of Investment Companies and the SIPC to Borrow and to Pledge Assets" (May 9, 1996). Two memoranda by (b) (6) discuss collateral available if lending to one of the Chicago futures clearing corporations is contemplated.

Like these other organizations, The Depository Trust Company ("DTC") probably has a limited power to pledge its assets. These limitations are not imposed by regulatory or corporate law. Instead, they are implicit in the structure of UCC Article 8. (b) (6) to (b) (6) (b) (6), "DTC – Power to Pledge Collateral" (July 7, 1998). Although the law is not certain, it appears difficult to obtain an enforceable pledge of customer securities from DTC, although one can obtain a worthwhile perfected security interest in securities in transit and in DTC's rights to retrospective assessments. (b) (6) to (b) (6), "Lending to DTC—Taking Participants' Security Entitlements as Collateral Under the Code" (March 2, 2001). The authority of a Federal Reserve Bank to extend secured credit to DTC is discussed in Section I-A.

2. Payments

Because the Doomsday Book concentrates on the Bank's emergency powers, it seldom discusses the Bank's payment business—usually a routine operational matter. However, many exercises of the Bank's emergency powers involve payments, sometimes in unconventional manners. Unconventional payments—especially those to or routed through a party of weak solvency—create (or accentuate) unconventional legal risks of payments.

The "overnight payments" memorandum is particularly noteworthy. It is not primarily a risk analysis. Instead, it is intended to be read by and reassure emergency counterparties of the Bank. The intended recipient of this memorandum is a counterparty of this Bank, who needs assurance that this Bank can bind itself to a payment order, even if the Bank's accounting system is shut down. Therefore, this memorandum reads more like a powers opinion than an advisory memorandum. However, it does not so much articulate a corporate power of the Bank, as it assures a counterparty that certain acts by this Bank will create a binding obligation of the Bank.

Also worth noting is the draft memorandum discussing special deposits. A Reserve Bank probably has the power to accept special deposits: something discussed by one of the powers opinions. (b) (6) to (b) (6), "National Bank of Kuwait/Request for Foreign Exchange Clearing Facility" (September 18, 1990). A special deposit can be useful whenever an escrow is desired, or when a non-documentary analogue to a letter of credit is needed. (See the powers opinion: 63 Federal Register 65693, discussing a Federal Home Loan Bank's power to issue letters of credit. *See also* 12 C.F.R. §§ 938, 943.)

3. Powers Memoranda (not opinions)

The memoranda in this section, although not legal opinions, discuss various lending powers of this Bank. The two (b) (6) drafts were referred to above, in the discussion of powers opinions. The (b) (6) memorandum expresses an informal opinion by the Board's General Counsel that Federal Reserve Banks do not have the power to make non-recourse loans.

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Whether or not this expresses the formal opinion of the Board or Board staff, it is not consistent with the history and language of Section 10B of the Federal Reserve Act. (b) (6) to Legal Files, "Nonrecourse Lending under Section 10B of the Federal Reserve Act" (July 29, 1997).

4. Miscellaneous

This section contains five memoranda that could not be classified elsewhere. The (b) (6) memorandum on guarantees discusses some risks of obtaining guarantees from corporations. The (b) (6) memorandum discusses the powers of some potential emergency nonbank borrowers: the commodities exchanges and clearing houses in Chicago. The other (b) (6) memorandum is a general risk analysis of emergency lending to debtors with whom this Bank is not familiar. The (b) (6) memorandum discusses minimum documentation for emergency lending. The (b) (6) memorandum—prepared as an early part of this Bank's Y2K project—discusses bank holiday laws.

D. Bankruptcy and Insolvency Law Issues

The memoranda of the fourth section are variations on a theme: the legal risks of lending to firms that are or subsequently become insolvent. These risks vary with the insolvency law applicable to insolvent firms. The Bankruptcy Code—which is applicable to ordinary nonfinancial firms as well as securities brokers and commodities merchants—probably poses the greatest lending risk, with its automatic stay, elaborate avoidance scheme, and risk of equitable subordination. In contrast, New York Banking Law is relatively safe to secured lenders.

These memoranda are no substitute for contemporaneous legal advice. The legal risks of lending begin with pre-lending deliberations, and persist through the lending process, subsequent workout efforts, the declaration of insolvency, and the subsequent insolvency proceeding. Affiliates of the debtor may have claims against the creditor. Most of these risks are very fact-specific, and the law remains in perpetual flux. Social attitudes continually oscillate between debtors and creditors, and common law courts will continually resurrect old doctrines and suppress newer ones. (For example the memorandum from (b) (6) & (b) (6) to (b) (6) *et al*, "Controlling Creditor Liability" (Oct. 31, 1996) should probably be updated. "Lender liability" actions are less likely to succeed in today's judicial environment; *cf. In re* Owens-Corning, 419 F.3d 195 (3d Cir. 2005).) Statutory law changes are no less frequent. New York Banking Law was dramatically revised in 1991. The Bankruptcy Code has been revised in several significant respects in 1994, and Congress is currently considering another set of substantial revisions. With the exception of Puerto Rico, Article 9 became effective on July 1, 2001 (a few months later in a few states.)

There is probably insufficient guidance in this section on the subject of preferential avoidances: a significant risk in lending to national banks and entities whose insolvency is subject to the Bankruptcy Code. This has been partially supplemented by (b) (6)'s 2005 memorandum, but there is more work to do.

E. *International Issues*

This section was introduced in Version 3.1 of the Doomsday Book. Broadly speaking, this Bank has two kinds of international roles: a narrower banking role and a broader role concerning international debt crises. The international banking role is operationally similar in many ways to the domestic banking role, although it presents many unique legal issues. But in international crises, the Federal Reserve's operational role becomes far more complex than banking. Most of the memoranda in this section are drafts written during the Korean crisis of late 1997 and early 1998. (b) (6) later sanitized some of the drafts in May 1998.

The letter to (b) (6) outlines a common issue in branch closings: long-lived liabilities booked in the United States, usually standby letters of credit. If the branch that issues such liabilities ceases to exist because it is closed, what happens to the obligation? The answer is legally uncertain. It may disappear completely; it may spring to the head office; or it may persist. This letter proposed a solution that private parties could incorporate in their agreements. In a June 1997 meeting, the Standby Practices Working Group declined to take up the suggestions in this letter, because the financial institutions that they represented would probably not accept the suggestions. Foreign branch standby letter of credit liabilities will therefore remain a problem in the case of a branch closing.

(b) (6) memorandum outlines an international operational problem: risk to this Bank from foreign attachments. The work behind this memorandum has been thoroughly updated using foreign counsel opinions (b) (6), and may be summarized in a memorandum soon. (The problem jurisdictions seem to include Japan, Honk Kong and Argentina.) This problem is also discussed in other memoranda, *e.g.*: (b) (6) (b) (6) to (b) (6), "Assets of non-New York branches as collateral" (Jan. 8, 1993); (b) (6) (b) (6) to (b) (6), "Sakura Bank—Proposal to pledge book-entry securities owned by head office at discount window" (Sept. 22, 1995); (b) (6) to (b) (6), "Discount Window Collateral—Foreign Situated and Foreign Booked (Jan. 10, 1997). These memoranda are not included in the Doomsday Book because the (b) (6) memorandum adequately frames the problem, and these other memoranda deal with ordinary operational concerns of the Bank.

F. *Regulatory and Enforcement Issues*

This section contains a number of memoranda on regulatory and enforcement issues. Most of them discuss the consequences of a *legal* crisis: usually the legal impact of a criminal conviction on the operations of a financial institution. This impact can be wide-ranging. Without mitigation (which is often available), a conviction can amount to a death sentence on many activities of a financial institution.

A few other memoranda in this section discuss general enforcement authority.

G. *Y2K Playbook Scenario Guidance Sheet*

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DOOMSDAY BOOK

Version: **5.0** **INTERNAL FR**
Date: **May 3, 2012**
Compiler: (b) (6) **Extension:** (b) (6)
Editor: (b) (b) (6) **Extension:** (b) (6)

The "Doomsday Book" is a collection of emergency documentation compiled by the Legal Department of the Federal Reserve Bank of New York. It has two purposes in mind. First, it is a ready reference source, containing background material likely to be useful in responding to an emergency, and educational in planning for emergencies. Second, because all of its documents are on DVD-ROMs, it is an operational mitigant against the risk of lost power or connectivity. The Doomsday Book, however, assumes working computers and printers.

It is maintained in two forms: a mostly paper version (copies kept in the Law Library, General Counsel's Office, Legal Records, and EROC), and a mostly digital disk version (distributed widely through the Legal Department.) Both the paper and disk version refer to the purely electronic files on the Legal server. Both the paper and the digital disk versions are multimedia. Most of the 2008-09 agreements are extremely voluminous, and have always been stored as digital disks. The paper version will continue to store these agreements in digital disk format. The disk version will have this introductory section in paper, with the digital disks attached to this paper document containing the rest of the documentation.

The complete paper version should always be current, and the complete paper version will contain a current digital risk. To ascertain whether a DVD-ROM is current, ask the editor or compiler, or check its version number against that of the complete paper versions. Feel free to copy the current digital disk.

From time to time, the Compiler will update the Doomsday Book, as the Editor adds additional documentation. The Doomsday Book is not, and can never be a finished product. The Editor is the gatekeeper for all additions and changes to the Doomsday Book.

Please contact the Editor for any suggested additions or revisions. The other Discount Window attorneys—(b) (6), (b) (6), (b) (6), and (b) (6)—remain available to answer any questions concerning the Doomsday Book.

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The Doomsday Book is divided into this Introductory Section and several volumes. Although the contents are identical in both versions of the Doomsday Book, the organization of the contents is slightly different. Specifically:

- In the paper version of the Doomsday Book, this Introductory Section is part of Volume I.
- In the personal copies of the Doomsday Book distributed to individuals, this Introductory Section is the only paper section, although it is replicated in the attached DVD as if it were a separate volume.

This Table of Contents only applies to this Introductory Section. The contents of the rest of the Doomsday Book are organized in the same order as specified in the Table of Contents, but do not contain any of the page numbers seen here. The attached DVD is organized by folders and subfolders that mirror the order here. The paper version is organized by volumes, tabs, and subtabs, again mirroring the order here. Individual documents within the same tab of the paper version are separated by a colored sheet of paper.

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I. Prefatory Matters

A. Origin, Scope, Purpose, and Organization

The Doomsday Book has existed in various forms from the early 1990's. (The revision history goes back to 1997, but previous versions existed.) The Doomsday Book is a compilation of various emergency agreements (including briefs) and supporting memoranda. Some of the agreements are sanitized and updated versions of past emergency lending agreements. Others are raw emergency lending agreements, unsanitized. Others have been prepared as part of the Legal Department's contingency planning efforts, and have not yet been used. Similarly, some memoranda are situation-specific; others are general. Most of the contents of the Doomsday Book are confidential information of the Federal Reserve Bank of New York, and protected by the attorney-client privilege.

The Doomsday Book is intended to help lawyers of the Federal Reserve Bank of New York aid their clients in crisis management. It was originally distributed to a limited set of lawyers and select senior staff members. This has changed with time, as more lawyers are drawn into crisis management. Now, all FRBNY lawyers receive a copy of the Doomsday Book. Since the Doomsday Book seemed more confusing than helpful to non-lawyers, it is no longer distributed outside of the Legal Function. However, some individuals may have older versions on their shelves, and there is nothing wrong with sharing this version with clients.

It is primarily oriented toward crises that require an operational response, such as emergency lending or emergency payments. Because each crisis in unique, the Doomsday Book is not intended as an "off-the-shelf" solution to any particular crisis. Therefore, the Doomsday Book agreements will probably require modification for each crisis. The legal opinions and other memoranda may need fact-specific supplementation. There shall be no "playbook" of general advice, as there was with the Y2K playbook project. However, the Doomsday Book should provide a firm framework upon which crisis-specific modifications may be made. It is intended to save time, when time is a very scarce resource.

The Doomsday Book is also intended to aid contingency planning. By identifying a set of legal issues (and solutions), it should raise questions about related issues and solutions. The collected agreements and memoranda in the Doomsday Book should suggest gaps in coverage, and therefore encourage more work along these lines.

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B. Note on Intellectual Property

Most of the documentation in the Doomsday Book was developed in-house, prepared for us by outside counsel, or taken from public sources, and therefore is unrestricted by intellectual property law. However, some of the agreements are copies of model agreements, which often bear a copyright and a copyright restriction. This raises several copyright questions. All information in this note is valid as of January 30, 2004, when I visited the website of the various relevant organizations: ISDA (www.isda.org), the Bond Market Association (www.bondmarket.com), and the FRBNY-sponsored committees (www.ny.frb.org/fmlg). All websites provided unrestricted electronic access to their master agreements and supporting annexes, although ISDA and the Bond Market Association do not give access to all their explanatory documentation. Legal restrictions are another matter.

ISDA appears to be the most jealous of its copyright. An ISDA "document cannot be copied, reproduced or distributed in any form (paper, electronic or otherwise) without the express written permission of ISDA's General Counsel or subject to any exceptions as discussed below." ISDA provides one significant exception: "The ISDA Master Agreements and the ISDA Credit Support Documents may be copied (in paper or electronic form) for purposes of documenting transactions under an ISDA Master Agreement or collateralizing a transaction by utilizing the ISDA Credit Support Documents. However, the initial copy of the ISDA Master Agreement and/or ISDA Credit Support Document must be purchased."

The Bond Market Association master agreements and annexes are distributed gratis, has no apparent copyright restrictions, and do not appear to bear a copyright notice. It is also worth noting that the .pdf files in which the master agreements are embedded are set to permit cut-and-paste operations.

The FMLG and FX Committee's ICOM and FEOMA documentation are similar to the Bond Market Association's. It is distributed *gratis*, has no apparent copyright restrictions, and does not appear to bear a copyright notice.

All of these documents were provided in .pdf format. These .pdf files permit cut-and-paste operations. Since a .pdf document can be prepared to block cut-and-paste operations, this electronic permission is evidence that authorized users—even of the restricted ISDA documentation—are permitted to prepare their own documents with cut-and-pasted excepts of the master documentation. However, this approach—even if legally justified—might not be a wise one. Counterparties generally do not modify master documentation by changing its language. Instead, they execute the master documents *in haec verba* and add specific annexes that strike or supplement master agreement language.

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C. Note on Legal Evolution

The law constantly evolves, and much of the material in the Doomsday Book is old. Many of the memoranda and agreements in this book, although still useful, are therefore not current. The Editor will try to note some of the obsolete legal points in these memoranda. However, unless stated otherwise, please do not take any of these memoranda as advice on current law. A few particularly significant legal developments are noted immediately below, in approximate chronological order:

1. **The Dodd-Frank legislation, enacted in 2010,** created many changes. Many or most of the Doomsday Book documents were prepared before Dodd-Frank, and thus do not respond to it. The changes in Dodd-Frank relevant to Reserve Bank emergency authority include:

- Section 1101 transformed Section 13(3) lending authority. It simultaneously expanded and restricted the powers of Reserve Banks to lend under this section. It apparently ratified the Board's broad interpretation of Reserve Bank lending power (which included asset purchases), but limited this power to programs with broad-based eligibility.
- Title II created an "orderly liquidation authority" scheme: a new insolvency law applicable to large financial firms. This changes many of the risks of emergency lending, especially its priority scheme. These changes are largely favorable to Reserve Bank creditors.
- Section 806(b) authorizes lending to "designated financial market utilities": *i.e.*, non-bank clearing houses.
- Section 1103 mandates disclosure of lending information, including collateral posted, after a two-year period.
- Section 608 enacted significant changes to lending limits and Section 23A, which will make conduit lending through a bank to its affiliates more difficult.

2. **Congress amended Section 13(3) of the Federal Reserve Act in 2008**, imposing disclosure requirements on Federal Reserve lending under this section. (This was superseded by Dodd-Frank.) It also permitted interest on reserves, accelerating the due date of an earlier statute.

3. **The five-vote requirement for Section 13(3) discount window lending was relaxed in 2001.** 12 U.S.C. § 248(r)(2) permits action by unanimous Board vote, if fewer than five members of the Board are available.

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4. **The Bankruptcy Code has been amended several times since its recodification in 1978.** (A few memoranda date before 1978: use with particular caution.) Significant amendment dates include 1984, 1986, 1990, 1994, 2000, and 2005. None of the memoranda that refer to the Bankruptcy Code should be presumed up-to-date in the details. However, the only major structural change in the Bankruptcy Code since 1978 (from our perspective) has been its treatment of financial contracts.

- One significant recent addition to the Bankruptcy Code was made in Pub. L. 106-554, signed by President Clinton on December 21, 2000. Federal Reserve Banks are now "financial institutions" and their liquidation of a securities contract is no longer subject to the automatic stay.
- Most of changes in the 2005 legislation affect consumer bankruptcy, but several are significant to a Federal Reserve Bank:
    - The list of qualified financial contracts in the Code is substantially expanded to include most derivatives, and cross-product netting.
    - United States branches of foreign banks are unambiguously removed from the Bankruptcy Code, and will be relegated to bank insolvency law.
    - The netting provisions of the Payment System Risk Reduction Act are extended to include the DTC.

5. **The European Union's Collateral Directive helps Reserve Banks take an enforceable security interest in securities** on the books of Euroclear and Clearstream. This Directive might not yet been ratified in some of the EU states, and opinion practice is still necessary for cross-border pledges of securities. The Hague Conference Convention in Indirect Holdings of Securities, if ratified, should give further protection to the Federal Reserve for its security interest in securities.

6. **The United Nations Commission on International Trade Laws ("UNCITRAL") promulgated a Convention on "The Assignment of Receivables in International Trade."** This may facilitate the cross-border use of customer loans as collateral. At the time of writing (V4.1), however, the Convention has only been ratified by Liberia and signed by three states: the U.S., Luxembourg, and Madagascar.

7. **Revised UCC Article 9 became effective in 2001.** This revision has a significant effect on the way in which this Bank creates, perfects, and maintains its security interests. Only Puerto Rico has been a holdout. Highlights:

- Security interests may now be taken in deposit accounts,
- Filing will perfect a security interest in notes as well as other collateral (this might be the most important single change from a Reserve Bank's perspective),
- The location of filing—especially for foreign and national banks—has been changed,

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- Electronic filing and search are encouraged, and are becoming a norm.

8. **The Gramm-Leach-Bliley Act of 1999 repealed old Section 11(m) of the Federal Reserve Act**, which placed limits on bank lending on securities collateral. This repeal could facilitate back-to-back lending arrangements.

9. **Also in 1999, Congress removed the Section 16(2) restrictions on collateralization of Federal Reserve notes**, thus expanding the permissible volume of Section 10B lending authority.

10. **In 1995, the United States Supreme Court significantly expanded the scope of national bank incidental powers.** *NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.,* 513 U.S. 251 (1995). This case, if anything, strengthens the validity of all pre-1995 powers opinions based on the incidental powers of Federal Reserve Banks.

11. **Congress amended Section 13(3) of the Federal Reserve Act in 1991, removing long-standing restrictions on eligible collateral.** Therefore, lending powers memoranda written before 1992 are likely to be misleading in their treatment of Section 13(3). (The same is true for memoranda written between 1992 and 2010, because of the Dodd-Frank legislation.) A few such pre-1992 memoranda are nonetheless included.

12. It should be noted that New York has not yet adopted Revised Article 3 of the Uniform Commercial Code. If it does, some aspects of agreements regarding promissory notes might perhaps need to be revisited, although this is not a high priority matter.

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x. (b) (6) "Emergency Liquidity Assistance to a Non-Bank" (#100592) 10/15/89
xi. Board of Governors, "Eligibility for Discount of Mortgage Company Notes, 56 Fed. Res. Bull 39 (1970) (#275469) **(New to V5.0)** ....
xii. Board of Governors, "Advances and Discounts by Federal Reserve Banks," 56 Fed. Res. Bull. 940 (1970) (#100106) 11/23/70

B. Securities Lending, Repo and Fed Funds

i. (b) (6) and (b) (6) to (b) (6) "Authority to Pay Interest to Primary Dealers on Cash Balances Held in Margin Accounts) (#336754) **(New to V5.0)** .... 11/__/11
ii. (b) (6) ((b) (6) to (b) (6) & (b) (b) (6), "Authority for the Federal Reserve to Purchase Fed Funds" (Draft) (#280160) **(New to V5.0)** 06/06/08
iii. (b) (6) (b) ((b) (6) to Legal Files, "Power of Reserve Banks to Purchase Fed Funds" (#265221) **(New to V5.0)** 04/15/08
iv. (b) (6) (b) (6) ((b) (6) (b) (6) to Board of Governors and the Federal Open Market Committee, "Authority to engage in securities lending activities with primary dealers" (#280373) **(New to V5.0)** 3/10/08
v. (b) (6) (b) (b) (6) to Legal Files, "Modification to Securities Lending Facility" (#256004) **(New to V5.0)** 01/16/08
vi. (b) (6) to (b) (6) "Foreign Securities Lending" (#297078) **(New to V5.0)** 01/29/97
vii. (b) (6) "Exchange of Maturing Securities" (#176746) (Draft) **(New to V5.0)** 06/20/06
viii. (b) (6) to Distribution List, "Statutory Analysis: Overnight Cash Balance at Domestic Triparty Repo Custodian" (#121375) **(New to V5.0)** .. 09/09/05
ix. (b) (6) to (b) (b) (6) "Domestic Tri-Party Repo" (#98976). 08/10/99
x. (b) (6) & (b) (6) to (b) (6) "Authority to Engage in Reverse Repo Agreements" (#48139) 04/16/97
xi. ((b) (6) to Federal Open Market Committee, "Legality of plan for lending Government securities by Federal Reserve Banks" (#279410) **(New to V5.0)** 07/10/68

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xii. (b) (6) (Draft), "Authority of Federal Reserve Banks to 'Lend' Government Securities" (#279407) **(New to V5.0)** 06/06/68

C. Loan Restructuring, Guarantees and Equity Kickers (**All new to V5.0**)

i. (b) ((b) (6) to Legal Files, "AIG Loan Restructuring—Reserve Bank Powers" (Draft) (#286371)..10/21/08

ii. (b) (6) & (b) ((b) (6) to (b) (6) "Bank Authority to Issue a Guarantee" (#281797)..07/25/08

iii. (b) ((b) (6) to (b) (6) "Equity Kickers and Reserve Bank Loans" (#280304)..07/11/08

iv. (b) (6) to (b) (6) "Authority of Reserve Banks to Issue Guarantees on Behalf of Depository Institutions" (Draft) (#232613)...........08/27/99

v. 63 Federal Register 65693, "Federal Home Loan Bank Standby Letters of Credit (12 C.F.R. §§ 938, 943) (#100111) 11/30/98

vi. (b) (6) to ((b) (6) "REI/authority to acquire a firm under incidental powers" (#75589) 09/26/90

D. Asset Purchase Authority

i. (b) ((b) (6) to Legal Files, "Analysis of the Legal Authority for the Bear Stearns Transaction" (#265951) **(New to V5.0)**................................04/16/08

ii. (b) (6) (b) (6) (b) (6) (b) (6) to Board of Governors, "The authority of the Federal Reserve to provide an extension of credit in connection with the acquisition by JP Morgan Chase of Bear Stearns" (#281546) **(New to V5.0)** 04/02/08

iii. (b) (6) (b) (6) (b) (6) (b) (6) to Board of Governors, "The authority of the Federal Reserve to provide an extension of credit to Bear Stearns through JP Morgan Chase" (#281545) **(New to V5.0)**..04/02/08

iv. (b) (6) to Legal Files, "FRBNY Powers to Enter Into Nonrecourse Lending Transactions" (#264279) **(New to V5.0)** 3/14/08

v. (b) (b) (6) to (b) ((b) (6) "Non-recourse Lending Under Section 13(3) of the Federal Reserve Act" (#221636) **(New to V5.0)**......................07/30/07

vi. (b) ((b) (6) "Why a Reserve Bank Can Deal in Mortgage and Commercial Paper" (#232316) **(New to V5.0)**...08/24/07

vii. (b) ((b) (6) to Legal Files, "Section 14(b)(1) Municipal Securities" (#65648) 09/01/00

viii (b) (6) to (b) (b) (6) "Options on Repurchase Agreements" (#283945) **(New to V5.0)**..08/10/99

ix. (b) ((b) (6) to Legal Files, "Nonrecourse Lending under Section 10B of the Federal Reserve Act" (#49514)..07/29/97

x. (b) (6) to ((b) (6) "Reserve Bank purchase of agency

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obligation Section 14(b)(2)" (#98980) 02/17/89

E. Gold Lending and Foreign Exchange Powers

i. (b) (6) (b) (6) to Legal Files, "Power to Transact with CLS Bank" (#335736)) (**New to V5.0**)..10/06/11

ii. (b) (6) to (b) (6) "Providing Dollar Liquidity to Foreign Central Bank Customers"(#109977) (**New to V5.0**).....02/27/06

iii. (b) (6) to Legal Files, "Authority of FRBNY to Engage in Repo Transactions with Foreign Currency Reserves" (#161058) (**New to V5.0**) ...01/24/06

iv. (b) (6) to Distribution List, "Statutory Analysis: Overnight Cash Balance at Foreign Euro Triparty Repo Custodian" (#131222) (**New to V5.0**)09/09/05

v. (b) (6) to (b) (6) "Treasury: Money Employed Account for DM Repos" (#283633) (**New to V5.0**)...05/16/96

vi. (b) (6) to (b) (6) "Cable transfers/foreign exchange and Section 14 of the Federal Reserve Act) (#204884) (**New to V5.0**) 01/30/91

vii. (b) (6) "Legal Basis for Foreign Currency Operations" (#278193) (Draft from Board Staff) (**New to V5.0**)...12/13/89

viii. (b) (6) (b) (6) to (b) (6) "Legal Authority for Foreign Exchange Operations" (#211504) (**New to V5.0**) 12/07/89

ix. (b) (6) to (b) (6) "National Bank of Kuwait/Request for Foreign Exchange Clearing Facility" (#98995)..09/18/90

x. (b) (6) to (b) (6) "Authorization to invest foreign currency funds" (#212905) (March 3, 1986)

xi. (b) (6) to (b) (6) "Section 2(a) of the Gold Reserve Act of 1934" (#98997)..02/04/83

xii. (b) (6) (b) (6) (b) (6) to (b) (6) "Gold Loans" (#189493) (**New to V5.0**)..04/19/76

F. Access to Federal Reserve Services

i. (b) (6) to (b) (6) & (b) (6) "Federal Reserve Bank Powers to Provide Overdraft Capacity to Broker-Dealers" (#315862) (**New to V5.0**)..10/09/02

ii. (b) (6) (b) (6) to Legal Files, "Is the Power to Establish an Account Incidental to Section 13(3) Lending Authority?" (Draft) (#40899) 05/15/98

iii. (b) (6) to (b) (6) "Foreign bank branch and agency discount window access" (#98986)...01/02/96

iv. (b) (6) & (b) (6) to (b) (6) "Federal Reserve Bank Powers to Provide Nonbank Dealers with Government Securities Clearance Services" (#98991) 05/04/95

v. (b) (6) to (b) (6) "Authority of the FDIC to Open Receivership

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Accounts at a Federal Reserve Bank," (#224718) (**New to V5.0**)................04/14/88
vi. (b) (6) to (b) (6) "Reimbursement from the Treasury for fiscal agency services" (**New to V5.0**) (#144576).......................................08/28/86
vii. (b) (6) to (b) (6) "Authority of Treasury Department to Indemnify Bank" (#144522) (**New to V5.0**) 03/26/82
viii. (b) (b) (6) and (b) (6) to (b) (6), "Reimbursement to this Bank for fiscal agency activities performed at the direction of the Treasury" (#144421) (**New to V5.0**)..03/28/80
ix. (b) (6) to (b) (6) "Legal Authority of Reserve Bank to Permit Reserve Account Overdrafts" (#105569) (**New to V5.0**)..................01/15/80
x. (b) ((b) (6) (b) ((b) (6) to (b) (6) "Government unlimited liability to a Federal Reserve Bank" (**New to V5.0**) (#125478)....................06/13/75

G. Borrowing and Miscellaneous
i. (b) ((b) (6) to Legal Files, "Does Dodd-Frank Section 806(b) Grant Takeout Lending Authority?" (#333443) (**New to V5.0**).............................08/20/11
ii. (b) (6) (b) to (b) (6) & Vice Chairman (b) (6) "Authority for the Federal Reserve to Purchase Fed Funds" (Draft) (**New to V5.0**) (#280160)............................06/06/08
iii. Memorandum from (b) (6) (b) (6) & (b) (b) (6) to Legal Files, "Power of Reserve Banks to Issue Fed Funds" (# 265211) (**New to V5.0**) 04/15/08
iv. (b) (6) to (b) (6) "Authority of Reserve Banks to borrow funds denominated by a foreign currency" (#98994)...05/24/96
v. (b) ((b) (6) to (b) (6) "Power of a Federal Reserve Bank to Serve as the Receiver in an Edge Corporation Insolvency" (#98996)...........04/17/95

H. Statutory Interpretation Techniques
i. (b) (6) to Legal Files, "Legislative Reenactment and Section 13(3)" (#335560) (**New to V5.0**)..10/26/11
ii. (b) ((b) (6) to Legal Files, "Applicability of Title 8 of Dodd-Frank to Foreign Financial Market Utilities" (#328979) (Draft) (**New to V5.0**)..........03/25/11
iii. (b) ((b) (6) to Legal Files, "Notes on Federal Reserve Banks' Incidental Lending Powers—Notably Securities Lending" (#232538) (**New to V5.0**)...12/24/07
iv. (b) ((b) (6) "Why a Reserve Bank Can Deal in Mortgage and Commercial Paper" (#232316) (**New to V5.0**)...08/24/07

II. History and Policy

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i. (b) (6) (b) (6) "Federal Reserve Credit Initiatives During the First Year of the Meltdown: August 2007 to Mid-2008" (#336726) (**New to V5.0**) 10/11

ii. (b) (6) (b) (b) (6) to (b) (6) "Primary Dealer Status of Salomon Brothers, Inc. 1991-1992 (# 325151) (**New to V5.0**) 10/04/10

iii. Compilation of Board of Governors financial crisis actions under Section 13(3), 13(13), and 23A/B of the Federal Reserve Act, the BHC Act, the FDI Act, Regulation D, and other provisions of law (#324528) (**New to V5.0**) ... 09/29/10

iv. (b) (6) "Financial Crisis Manual" (#337857)(**New to V5.0**) .. 09/09

v. "Managing Financial Crisis: A Primer" (Principal author: (b) (6)) (#146701) .... Fall, 2005

vi. (b) (6) "Chronology of Events at the Federal Reserve Bank of New York After the World Trade Center Attack" (#77924) 11/20/01

vii. (b) (6) (6) "Legislative History of the Provisions of the Federal Reserve Act Relating to the Discount Window and Open Market Operations" (#60442) 03/21/00

viii. (b) ((b) (6) "The Origin of the Federal Reserve's Discount Window" (#67354) 05/29/97

ix. (b) ((b) (6) to Legal Files, "A Brief History of Repo Authority for Federal Reserve Banks (#283634) (**New to V5.0**) 05/23/96

x. FRBNY, "A Report on Drysdale and other Recent Problems of Firms Involved in the Government Securities Market" (#199042) (**New to V5.0**) 09/15/82

xi. (b) (b) (6) "Lending Functions of the Federal Reserve Banks: A History" (#337421) (**New to V5.0**) 05/73

III. Operational Issues

A. Security Interests

i. (b) ((b) (6) (b) (6). "The Fetishism of Physical Collateral" (#320292) (**New to V5.0**) 06/03/10

ii. (b) ((b) (6) to Legal Files, "Field Warehouses: An obsolete legal concept" (# 327234) (**New to V5.0**) 01/22/10

iii. (b) (6) to (b) (6) (b) (6) "Letter from Department of Education on Student Loan Securities and FRBNY Security Interests" (#335843) (**New to V5.0**) 12/30/08

iv. (b (b) (6) to Legal Files, "Self-Help and Sovereign Immunity: There is no FSIA Immunity for Setoff and Nonjudicial Dispositions of Security Interests" (#221793) (**New to V5.0**) 08/07/07

v. (b) (6) (CMTF Workgroup), "Evaluation of Excess Treasury Collateral Procedures" (#97576) 11/21/03

vi. (b) (6) "In-Transit Securities" (#86794) 08/26/02

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vii. (b) (6) (b) (6) to (b) (6) "On Lending to a Debtor who Has Previously Executed a Negative Pledge Agreement with a Creditor" (#45932) 03/25/99
viii. (b) (6) to (b) (6) "All-Assets Pledge Risk Assessment" (#47597) 03/04/99
ix. (b) (6) and (b) (6) (b) (6) to (b) (6) and (b) (6) "Review of the Proposal to Offer the Single-Account Structure to Foreign Banks" (#99000) 01/30/97
x. (b) (6) (b) (6) (b) (6) (b) (6) to (b) (6) "Mutual Funds Internal & External Borrowing Capacity" (#99001) 09/27/96
xi. (b) (6) (b) (6) to (b) (6) "The Authority of Investment Companies and the SIPC to Borrow and to Pledge Assets" (#99002) 05/09/96
xii. (b) (6) to (b) (6) "Mutual Insurance Company's ability to pledge its assets to secure a loan" (#99003) 03/04/91

B. Payments
i. (b) (6) to Legal Files, Draft "Special Deposits" (#75118) 07/25/01
ii. (b) (6) to (b) (6) "Will a 'Tested Fax Arrangement' be deemed a 'Commercially Reasonable Security Procedure' under UCC Article 4A?" (#56277) 11/12/99
iii. (b) (6) (b) (6) to Legal Files, "On 'Conduit Lending' by a Federal Reserve Bank Through Another Bank (with Appendix)" (#46164) 01/06/99
iv. (b) (6) (b) (6) (b) (6) (b) (6) to (b) (6) (b) (6) (b) (6) (b) (6) "Overnight Payments and Credits While Accounting System is Shut Down" (#50507) 05/16/97

C. Miscellaneous
i. (b) (6) (b) (6) to (b) (6) (b) (6) "Risk Analysis of Section 13(3) Lending" (#232613) 08/10/99
ii. (b) (6) (b) (6) (b) (6) (b) (6) to (b) (6) "Minimum Documentation Recommendation for Emergency Lending to DIs" (#51955) 05/07/99
iii. (b) (6) to (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) "December 31, 1999 Holiday Project: Summary of Relevant Holiday Laws" (#99009) 10/09/97

IV. Bankruptcy and Insolvency Law Issues
A. Core Insolvency Law
i. (b) (6) (b) (6) to (b) (6) (b) (6) (b) (6) "Analysis of the 'Chapter 14' SIFI Insolvency Proposal (#333984) (**New to V5.0**) 9/13/2011
ii. (b) (6) (b) (6) to Legal Files, "Section 718 of the Financial Services

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Regulatory Relief Act of 2006 and the Discount Window" (#192061) (**New to V5.0**)........12/04/06
iii. (b) (6) to (b) (6) "Requirements to Lift an Automatic Stay in an Insolvency Proceeding" (#57755) 12/24/99
iv. (b) (b) to (b) (6) "FCM Bankruptcy Regime" (#46583) 12/07/98
v. (b) (6) and (b) (6) to (b) (6) (b) (6) (b) (6) "Options Regarding Closure of Edge Corporation" (#99011) 07/28/94

B. Avoidances
i. (b) ((b) (6) to (b) (6) "Avoidances in Insolvency" (#138384)........10/07/05
ii. (b) (6) (b) ((b) (6) to (b (b) (6) (b) (6) "Legal Risks of Extraordinary Payments" (#50506)........05/16/97
iii. (b) (6) (b) ((b) (6) to (b) (6) (b) (6) "Preferences" (#99014) 08/24/77
iv. (b) (6) to ((b) (6) "The law of preferences and fraudulent conveyances in New York" (#99015)........03/13/78

C. (b) (6) Memoranda (**All new to V5.0**)
i. (b) (6) to Interested Parties, "Fraudulent Conveyance Exposure to Insiders Under New York and Delaware Law" (# 335409) 07/02/09
ii. (b) (6) to (b) (6) (b) (6) and (b) (6) "What constitutes "New Value" under 11 U.S.C. 547(c)(1) and (c)(4)?" (Draft) (#311466)........06/16/09
iii. (b) (6) to (b) (6) (b) (6) (b) (6) "What constitutes a "contemporaneous exchange" under 11 U.S.C. § 547(c)(1)?" (Draft) (#311467) 06/10/09
iv. (b) (6) (b) (6) (b) (6) to (b) (6) "Defending Preference Actions: Hypothetical Chapter 7 and Ordinary Course of Business" (#311468) 05/27/09
v. (b) (6) to Interested Parties, "Equitable Subordination (Including 'Insider' Status)" (#311470)........03/25/09
vi. (b) (6) to Interested Parties, "Lender Liability" (#311471)........03/25/09

V. International Issues
i. Anonymous, "Foreign Bank USD Liquidity" (#335561) (**New to V5.0**)........10/07
ii. (b) (6) (b) (b) (6) (b) (6) "Notes on the Prospect of a creditors' standstill" (Draft) (#100594) 12/16/97
iii. (b) (6) (b) (6) (b (b) (6) "Foreign Bank Default—Response" (Draft) (#40829)........12/15/97
iv. (b) (6) to (b) (6) "Immunity of the BIS" (#100656)........03/14/97

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v. Letter from (b) (6) to (b) (6) on Closing of Branches and Standby Letters of Credit (#99016) 01/09/97
vi. (b) (6) to (b) (6) (b) (6) (b) (6) "Vulnerability of The Bank to suit because of assets abroad" (#99017) 10/27/92

VI. Regulatory and Enforcement Issues

i. (b) (6) & (b) (6) to (b) (6) "Governmental Authority to Close Financial Institutions" (#199023) (**New to V5.0**) 01/22/07
ii. Memorandum to (b) (6) from (b) (6) "The Legal Consequences of a Money Laundering Conviction for a Financial Institution" (#70162) 02/09/01
iii. Memorandum from Enforcement Workgroup to (b) (6) and (b) (6) "Enforcement authority under Gramm-Leach-Bliley" (#59950) ... 04/25/00
iv. Memorandum from (b) (6) and (b) (6) to (b) (6) (b) "Impact of a Criminal Conviction on a State Member Bank" (#59623) 03/13/00
v. Memorandum from (b) (6) to (b) (6) and (b) (6) "Disqualification Provisions Triggered by Conviction of a Financial Institution" (#48854) 02/05/99

VII. Historical Collection of Primary Documents (**All But** (b) (6) (b) (6) **and** (b) (6) **new to V5.0**)

i. (b) (6) (b) (6) and (b) (6) to Board of Governors, "Potential Request of the Federal Reserve Bank of New York to Commence Negotiations in Connection with the Proposed Refinancing of a Portion of the Loans Extended to the United Mexican States by the U.S. Treasury (#335556) 05/24/96
ii. Draft (b) (6) Memo on Cable Transfers (#278103) 07/20/89
iii. (b) (6) to (b) (6) "Payment of interest on required reserves and reduction in reserve requirements" (#219614) 04/08/88
iv. (b) (6) to Legal Files, "Foreign exchange transactions for Federal Deposit Insurance Corporation (#211766) 11/04/87
v. (b) (6) (b) (6) (b) (b) to (b) (6) "The Federal Reserve Bank of New York's ability to deal in forward foreign exchange transactions" (#312840) 11/21/87
vi. (b) (6) to (b) (6) "Authority of Federal Reserve Banks to Provide Liquidity Support to the BIS Through the Purchase of Gold" (#131810) (Draft) 01/10/83
vii. (b) (6) to (b) (6) "Authority of Federal Reserve Banks to Provide Liquidity Support to the BIS by Purchasing Gold" (#144417) 12/24/82

viii. (b) to (b) (6) "Legal Authority of Federal Reserve to engage

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independently in foreign exchange transactions" (#212904) 09/14/81
ix. (b) (6) ((b) (6) to (b) (6) "Interest Bearing SDR Valued Deposits for the IMF" (#148825) 04/03/81
x. (b) ((b) (6) (b) (b) (6) to (b) (6) "Authority of Federal Reserve Banks to lend Government securities to dealers" (#98982) 01/29/80
xi. Legal Division ((b) (6) to Board of Governors, "Authority of Board to pay interest on required reserves of member banks" (#282372)...06/19/78
xii. (b) (6) b) ((b) ((b) (6) to (b) (6) Untitled [on gold transactions, specifically selling collateral on gold loans] (#131486)............03/18/76
xiii. "RND", "Authority for Foreign Exchange Operations by the Federal Reserve System" (Draft) (#212435)..08/28/75
xiv. (b) (6) "Direct Extension of Emergency Credit to a Nonmember Bank or Bank Holding Company on its Own Note" (#100588) 01/17/75
xv. (b) (6) to (b) (6) "Power of this Bank to pay interest on deposits of foreign central banks and foreign states" (draft) (# 282370) 10/29/74
xvi. (b) (6) to (b) (6) "Analysis of 31 U.S.C.A. Section 1023" (#144909)...06/30/69
xvii. ((b) (6) to Federal Open Market Committee, "Legal considerations regarding Federal Reserve participation in Treasury refunding operations (#336062)...06/12/68
xviii. (b) (b) (6) and (b) (6) Memoranda on Foreign Exchange Operations, in Hearings before the Committee on Banking and Currency, *Bretton Woods Agreement Act Amendments*, 87th Cong. 2d Sess. 157 (#337128)... 02/27-28/62
xix. (b) (6) to (b) (6) "Exchange of Treasury Bills by Federal Reserve Banks" (#225541) 03/26/47
xx. (b) (6) to (b) (6) Letter on Treasury Exchange Privilege (#283409)...01/22/37
xxi. Section 13(3) Historical Material (#200664) 1932-1988

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III. Description of Pre-2008 Legal Documents

A. Emergency Credit Agreements

1. Section 13(3) Lending Agreement with Recourse

Section 13(3) credit can be extended to "individuals, partnerships and corporations." Section 13(3) is the only means through which Discount Window credit can be extended to nonbanks without limitations on type of collateral. It is therefore the residual emergency lending authority. Section 13(3) authority requires special authorization by a supermajority of five members of the Board of Governors, who must find "unusual and exigent circumstances."*

The Section 13(3) lending agreement was most recently rewritten by (b) (6) (b) (6) in late 2001. It is the latest of a long series of rewrites. It had previously been written by (b) (6) in early 1999. It had been earlier rewritten by (b) (6) in 1996, in a form responsive to the 1991 amendments to Section 13(3). (Because of these amendments, the mechanics of Section 13(3) discounting can be very similar to conventional discount-window lending, although a variable interest rate is more difficult to implement.) It originated as a draft prepared by the Subcommittee of Legal Counsel in November, 1988. The (b) (6) rewrite comes in two different forms: a "long form" and a "short form." The short form is probably a better starting point, and is supplemented by an explanatory memorandum. The long form was an earlier attempt. It is preserved in this edition of the Doomsday Book because it is more inclusive, and some of its clauses might be useful in the short form standard.

The Section 13(3) agreement does not contain full ancillary documentation. It does not contain, for example, a sample note, Board of Governors resolution, or affiliate guarantees, which are all provided in the ancillary agreements and public announcements.

In principle, Operating Circular 10 ("OC10") would suffice as a template for loans to nonbanks. The Section 13(3) lending agreement, however, is substantially different from OC10, for several reasons. First, some problems (such as *D'Oench, Duhme* repudiation by the FDIC) simply do not exist for non-depository institutions, and do not require the cumbersome legal protections of OC10. Second, any 13(3) lending is likely to be emergency lending, quite possibly to an institution with whom there had been no previous relationship.

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* 12 C.F.R. § 201.3(d) also requires consultation with the Board of Governors, and a determination by the Federal Reserve Bank that "credit is not available from other sources and failure to obtain such credit would adversely affect the economy." These additional requirements may be waived by an appropriate Section 13(3) resolution, if necessary. Regulation A binds Reserve Banks, not the Board of Governors.

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In contrast, most credit extended under OC10 is usually in the ordinary course of business, to a well-known and creditworthy counterparty. Therefore, the Section 13(3) agreement contains a very strong menu of legal protections, not all of which are likely to be applicable to any given situation. Finally, OC10 lending will be limited to banks, which are subject to bank insolvency law. In contrast, Section 13(3) lending might include entities governed by the Bankruptcy Code, which is generally more hostile to secured creditors.

Because the Section 13(3) agreement is far more specialized to emergency lending than OC-10, it might be worth using a tailored Section 13(3) agreement for emergency lending even to depository institutions. In such a case, the tailored agreement would need to contain *D'Oench, Duhme* language, of the sort provided in OC-10.

2. International Swap Agreements

i. Foreign Central Bank Swaps (#297093)..04/14/09
ii. Dollar-Pound Swap Agreement (#77254) 09/14/01
iii. US/Canadian Dollar Swap Agreement (#77255) 09/14/01
iv. Medium-Term Exchange Stabilization Agreement (#169004)............................02/95

Section 14 of the Federal Reserve Act empowers Reserve Banks to purchase and sell "cable transfers" "in the open market, at home or abroad, either from or to domestic or foreign banks, firms, corporations, or individuals". Since cable transfers include forward and spot foreign exchange transactions, this section authorizes "swap agreements" with foreign central banks. (Authority for these swaps has also been found in Section 14(e) of the Federal Reserve Act; see the "Gold Lending and Foreign Exchange Powers" section of the powers opinions, below.) Such swap agreements, which involve a spot and offsetting forward foreign exchange transaction, resemble a loan collateralized by foreign currency kept on the books of the borrower.

The 2009 dated package is a folder, with many of the agreements actually drafted in late 2011. The agreements are all similar: the central bank counterparties are the ECB, and the central banks (or monetary authorities) of Australia, Brazil, Canada, Denmark, England, Japan, Korea, Mexico, New Zealand, Norway, Singapore, Sweden and Switzerland. There are three older specimen agreements drafted before the package. Two of them are 2001 swaps with the Bank of England and Bank of Canada that emerged out of the September 11 operational event. The third was a 1995 swap with Mexican entities. The 2001 deals were a straight liquidity deal among central banks. The 1995 swap involved sovereign credit, and used the central banks as fiscal agent.

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3. Section 10B[†] Lending Agreement—Operating Circular 10

Operating Circular 10 contains most of the language needed for any sort of secured lending, and is a good template for lending needs that are not satisfied by other documents in the Doomsday Book. Most major depository institutions have already signed the 1998 version of this operating circular, and may have signed the 2006 version. Some smaller banks, thrifts, credit unions and special-purpose institutions may be eligible for Section 10B lending, but have not yet signed OC 10.

This version of the Doomsday Book contains both the 1998 and 2006 versions of OC10. Some banks (mostly smaller ones) have not yet adopted the 2006 version, so the older version is worth retaining.

4. Section 13(13) Lending Agreement

Section 13(13) lending authority employs only limited collateral: obligations of or guaranteed by the United States or its agencies. This lending authority can be useful for nonbank government securities dealers. It should be noted that Federal Reserve Banks are authorized to accept ineligible collateral to supplement eligible collateral. *Lucas v. Federal Reserve Bank of Richmond*, 59 F.2d 617 (4th Cir. 1932).

The Section 13(13) lending agreement in the Doomsday Book is similar to an old version of the Section 13(3) lending agreement. Because of statutory differences, it is structured as an advance, rather than a note. (These statutory differences are probably irrelevant; the Section 13(3) lending of 2008 took on many different structures.) The Section 13(13) agreement is retained more as a reference source than a working agreement. Most extensions of credit to nonbanks collateralized by government securities are likely to be structured as repo agreements.

5. Repo Agreement

This is a modified version of the PSA Master Repurchase Agreement of September, 1996. (b) (6) modified it in August, 1997. Such an agreement would not need to be executed if the counterparty were already a primary dealer, who would be automatically subject to a similar agreement.

Although there is no doubt about this Bank's authority to enter into such an agreement, the source of authority for a particular transaction may be ambiguous. A purchase of securities followed by a resale may be authorized by any of Sections 10B, 13(13) or 14 of

† Throughout this discussion, we refer to Section 10B of the Federal Reserve Act as the statutory source of ordinary lending powers. This is true only in part: ordinary discount window credit is also extended under Sections 13(8) and 13A, and could also be extended under Section 13(2). (Until recently, Section 10B collateral was not eligible for Federal Reserve Note collateralization, so Reserve Banks tended to lend on other statutory authority, when possible. *See* Federal Reserve Act Section 16(2).)

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the Federal Reserve Act. (Section 14 authority requires FOMC approval.) A sale of securities followed by a repurchase is certainly authorized under Section 14. *See* (b) (6) (b) (6) to (b) (6) "Authority to engage in Reverse Repo Agreements" (Apr. 16, 1997) (#48139). However, such a transaction may also be characterized as securities lending against cash collateral, likely authorized by Sections 10B or 13(13).

Because the Bank's authority to engage in these transactions is undisputed, we do not see the point to deciding precisely which authority is being used in a particular case.

6. Sale of FX Book

This old agreement is probably no longer needed, now that the FDI Act, Bankruptcy Code, and New York Banking Law all treat foreign exchange contracts as "Qualified Financial Contracts", for which netting and closeout agreements are enforceable. Nevertheless, it is included for the sake of reference. This agreement was derived from the Franklin agreement of 1974, as modified in 1991 by (b) (b) (6) and (b) (6) in contemplation of the Bank of New England insolvency. This document is not only obsolescent, it is of dubious legal authority. A sale of a foreign exchange book probably involves a sale of liabilities, which cannot be done outside of insolvency without a third-party novation.

7. FDIC Indemnity Agreement

This agreement, drafted by (b) (6), has already been executed by the FDIC and the Reserve Banks. It simplifies the insolvency process, allowing the FDIC to pay up to the fair market value of a Reserve Bank's collateral to the Reserve Bank, in exchange for a release of collateral. As part of the payment, the Reserve Bank has a right of indemnification for future losses (*e.g.*, check returns), up to the difference between the fair market value and previous payments by the FDIC to the Reserve Bank. This agreement simplifies relations between the FDIC and the Reserve Bank, *if the Reserve Bank is comfortably overcollateralized.*

It is worth noting that this agreement does not apply to most transactions involving the FDIC and insolvent banks. Most insolvent banks are acquired by another bank in a purchase and assumption transaction. In structuring this transaction, the FDIC practice is to have the acquiring bank provide an indemnity for Reserve Banks.

B. Emergency Payment Agreements

1. Section 13(3) Account Agreement

This agreement was prepared by (b) (b) (6) in March 1999. If this Bank extends emergency credit to a nonbank, it may want the nonbank to have a direct account

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relationship with it. (The reasons for a direct account relationship are discussed in (b) (6) (b) (6) to Legal Files, "On 'Conduit Lending' by a Federal Reserve Bank Through Another Bank" (Jan. 6, 1999.)) This agreement establishes such an account relationship. It is loosely modeled after OC 1, but—as an emergency agreement—is drafted with a strong set of protections for the Reserve Bank. It was designed to work in conjunction with OC 6 and the Section 13(3) lending agreement.

It is worth noting that, without an on-line relationship, this Bank can probably only process 20-30 outgoing payment orders a day on this account. (The Kansas City and Boston Reserve Banks might be able to process up to 150 payment orders a day.) OC6 contains an optional agreement permitting a third party service provider to process accounts on a Federal Reserve Bank's books.

The current draft of this agreement provides only for a funds account. In version 3.2, the editor expressed a hope that Version 3.3 would also contain an agreement that contemplates securities accounts as well as funds accounts. However, after discussing the strict volume limits on offline transactions with various bank personnel, the editor decided that a securities account agreement was of very low priority.

2. FX DvP Agreement

The current draft was prepared by (b) (6) (b) (6) and (b) (6), and (b) (6) in 1992. It contemplates one party of doubtful credit, a group of counterparties of the party, and a discrete number of currencies (in the draft, dollars, sterling, Deutsche marks, yen, and French and Swiss francs.) To reduce the complexity of the arrangement, the Federal Reserve Bank of New York will deal only with a discrete number of "Participants," who will serve as principals in the transaction, effecting the counterparties' trades with the party of doubtful credit. The Federal Reserve Bank of New York serves as escrow agent, interposing itself between the Participants and the party of doubtful credit. As escrow agent, the Federal Reserve Bank of New York will not release funds to either party until it has been funded (in dollars or foreign exchange, as appropriate) by both parties. Participants are United States institutions, and the party of doubtful credit is presumed to have a New York office. The powers opinion corresponding to this agreement is the memorandum from (b) (6) to (b) (6) "National Bank of Kuwait/Request for Foreign Exchange Clearing Facility" (Sept. 18, 1990) (#75589).

There is no longer any need for such an emergency agreement, because the CLS Bank conducts such quasi-escrowed transactions on a routine basis. However, the Editor has decided to retain this agreement as a template for similar arrangements in other contexts.

As a technical matter, it is worth noting that this agreement uses "special deposits," which are one of the subjects of the (b) (6) memorandum. Standby letters of credit might be a

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better-understood alternative to special deposits. A standby letter of credit cannot be attached by third parties (including a receiver), although the proceeds may. *Supreme Merchandise Co. v. Chemical Bank*, 70 N.Y.2d 344, 514 N.E.2d 1358, 520 N.Y.S.2d 734 (1987).

C. Master Agreements

Most of these master agreements are promulgated by a recognized trade association or a Federal Reserve Bank of New York-sponsored committee. There is no need to comment on them, except for our prior adversion to the intellectual property issues raised by these agreements. (The discussion of intellectual property also contains the URLs for the appropriate association websites.)

D. Draft Nonrecourse Loan Agreement

This agreement, intended in effect to purchase assets, is in draft form. It will probably not get updated, since this bank now favors LLC technology (see post-2008 agreements) for its asset purchases or financing. There is one thing to note. Most nonrecourse lenders cannot afford to put the collateral to the lender by declaring a default, even though this is the entire point of nonrecourse lending. Such a default would probably trigger cross-default clauses in other agreements. This point was recognized in the March 13, 2008 non-recourse loan to Chase involving Bear Stearns collateral. Chase, therefore, was given a put option as an alternative to default. Exercise of this put option would transfer title to the collateral to FRBNY, with the consideration being debt forgiveness. This put option provided that any proceeds of collateral liquidation to FRBNY that exceeded the amount of the forgiven debt would be remanded to Bear Stearns. *See* "Annex to Operating Circular 10"(Non-recourse loan) (#264266) (March 14, 2008) (b) (6) to Legal Files, "FRBNY Powers to Enter Into Nonrecourse Lending Transactions" (#264279) (March 14, 2008) (put option is incidental to nonrecourse lending).

E. Closing of Branch or Agency

The documentation in this section is taken from the closing of the Daiwa branch in February, 1996, originally drafted by (b) (6) and (b) (6) (6) (b) (6) sanitized this documentation in May, 1997.

Contingent liabilities are a key problem with the closing of a foreign branch or agency. In private law, these liabilities are usually standby letters of credit (see Letter from (b) (6) (b) (6) to (b) (6) on Closing of Branches and Standby Letters of Credit, Jan. 9, 1997, #99016) In the case of Daiwa, these liabilities were criminal fines contemplated by the Justice Department. If these liabilities are payable after the branch is shut down, the holder of these United States liabilities will have no United States assets against which to proceed. In the private-law cases, the parties may be able to work problems out on their own, but some kind of collateral facility seems necessary in public law cases. (Under international

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law, criminal fines are unenforceable abroad, and must be settled out of domestic assets.)

The custody and pledge-deposit agreements of this section are tailored to New York law. In these agreements, the Federal Reserve Bank of New York serves as a passive collateral custodian for the New York Superintendent of Banks, who actually directs post-closing settlement of claims.

F. Ancillary Agreements

1. Promissory Note

A note is apparently no longer required. It has not been required for Section 10B lending since 1970. *See* 56 Fed. Res. Bull. 940 (1970); Memorandum from (b) (6) (b) (6) to Legal Files, "Nonrecourse Lending under Section 10B of the Federal Reserve Act" (07/29/97) (#49514). It was generally not used in the Section 13(3) lending of 2008. However, a simple promissory note is included with these ancillary agreements, for possible use in Section 10B or 13(3) lending.

The promissory note was adopted from the language of the promissory note in the old Section 13(13), by (b) (6) in August, 1997. (A promissory note is not included in the current Section 13(3) agreement.) The promissory note has been modified to provide for variable interest rates, a jury waiver, collection costs, and other details. Some language in the original promissory note appears to defeat negotiability and therefore is ~~stricken~~ in the current version. This language may be safely included if negotiability is not important. It should be noted that several of the Borrower's waivers (*e.g.*, protest) will become irrelevant if New York adopts Revised Article 3. However, there is no reason to delete this language at present.

2. Intangibles Collateral Agreements

These documents were drafted by (b) (6) in March, 1999. They seek to grant a perfected blanket-style security interest in all intangibles: accounts, receivables, qualified financial contracts (*e.g.*, swaps, forwards, FX, other derivatives), loans, securities, bank accounts, and the like. Because they supplant the all-assets and all-securities agreements drafted in 1991, the old agreements have been removed.

a. Intangible Collateral Agreement

This agreement is prepared as a collateral schedule to OC-10. It could be readily adapted to a Section 13(3) or other lending agreement. Note that it contains references to after-acquired collateral and proceeds. The agreement assumes that the debtor is located in New York. This assumption will not necessarily be the case, especially now that Revised UCC Article 9 became effective.

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b. UCC-1 Financing Statement

Many of the forms of collateral in the collateral agreement require a financing statement, to be filed in the public filing office. The financing statement is prepared as an attachment to the UCC-1 that would have to be filed.

3. Power of Attorney

In secured lending, the secured creditor is often in possession of collateral. To perfect its security interest or otherwise protect itself, it may have to do things to the collateral, such as supply the debtor's endorsement to certificates in blank, or receive payments from third parties. A power of attorney permits a secured creditor to take such acts as it needs to realize on or protect its interest in collateral. This power of attorney was drafted by (b) (6) (b) (6) in March, 1999.

4. Guarantee Agreements

All of the documents in this subsection were drafted by (b) (6) (b) (6) in March, 1999.

a. Model Parental Guarantee

A parental guarantee is commonplace in the world of secured lending. Such a guarantee serves as a useful source of collateral. Furthermore, a guarantee (especially a parental guarantee) mitigates risks posed by interaffiliate transactions. This guarantee consists of a conditional promise to pay (like any guarantee), coupled with a security agreement on parental assets that supports the guarantee.

A standby letter of credit would be an alternative way of accomplishing the same goal. It would be legally more simple and stronger than a guarantee, albeit perhaps at the cost of flexibility.

b. Letter of Agreement to Secure Guarantee

This document serves to secure the model guarantee with the assets of the guarantor.

c. Model Subsidiary Guarantee

This document serves the same function as the parent guarantee, except it applies to subsidiaries of a bank. (It should be noted that some United States banks do not have the power of granting guarantees. This should be no problem for nonbank subsidiaries.)

d. User's Guide to Guarantees

This document is retained in the agreement section, although it is a memorandum.

5. Treasury Fiscal Agent Letter of Indemnity

This letter derives from a late 1997 letter from Treasury, indemnifying FRBNY for its

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fiscal agency work with respect to Nazi gold claims. The indemnity language might be useful in future emergency fiscal agency functions. Indemnities have a long history, and some of the memoranda in the historical compilation discuss them.

6. Buddy Bank Documentation

Under some circumstances, a Reserve Bank might be incapable of operation—particularly in extending discount window credit. The buddy bank documentation (which has been executed) ensures that other Reserve Banks are able to act for the incapacitated Reserve Bank, as agents. The Editor decided to keep copies of the executed documentation in the Doomsday book, as well as a draft operational incapacity operation that could activate a buddy bank.

G. Public Statements

1. Foreign Exchange Committee, Y2K: Best Practice in the Foreign Exchange Market

This document is drafted to address Y2K operational failures that may trigger close-out provisions in foreign exchange contracts. It recommends a 3-day cool-off period, in which parties do not exercise their default rights, and points out that parties need not exercise their default rights even after the period has expired. This document may be useful, even outside of Y2K or the foreign exchange markets. It was carefully drafted to straddle the line between moral suasion and antitrust violation, and such drafting could be useful in any emergency "best practices" document. The New York Fed's antitrust immunity remains uncertain (see United States Postal Service v. Flamingo Industries (USA) Ltd. 540 U.S. 736 (2004)), as is the antitrust liability of any co-issuer of a best practices statement.

2. New York Bank Holiday

This bank holiday proclamation was originally drafted in August, 1990, in response to the Con Ed power failure. It has been generalized to respond to operational failures in general. With small changes in wording, this proclamation can be adapted to other bank holidays. For a brief discussion on the law of bank holidays, see (b) (6) to (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) "December 31, 1999 Holiday Project: Summary of Relevant Holiday Laws" (October 9, 1997).

3. Section 13(3) Resolution by Board of Governors

This resolution was taken from the original November, 1988 Section 13(3) draft lending agreement, and slightly modified by (b) (6) in 1997, and again in 2004 (to accommodate the 2001 revision to the Federal Reserve Act authorizing emergency quora). In earlier versions of the Doomsday Book, it was part of the Section 13(3) agreement. This version treats it as an ancillary "public statement." This classification as a public statement is for convenience. The Board need not publicly disclose such a resolution. *See* Memorandum

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from (b) (6) and (b) (6) to (b) (6) "Section 13(3) Lending Authority Disclosure Requirements (March 10, 1999) (#50269).

4. Emergency Lending Resolution by Board of Directors

The provenance of this resolution is the same as the 13(3) resolution. The determination in this resolution is required by Regulation A for emergency lending under either Sections 13(3) or 13(13) of the Federal Reserve Act. 12 C.F.R. § 201.3(d) (1997). The language of this document is drafted for Section 13(3) lending. If the first "whereas" clause is stricken and the obvious modifications made, it should also be appropriate for Section 13(13) lending. To the extent that Regulation A contemplates emergency lending under Section 10B authority, this document should also be appropriate.

5. Book-Entry Securities Resolution

(b) (6) drafted this resolution in 1992 in response to the Salomon situation. The Secretary of the Treasury's authority to permit the Federal Reserve Bank of New York to create a securities account for a nonbank is pursuant to Section 15 of the Federal Reserve Act. It has been revised in 1997 to clarify and strengthen the Secretary of the Treasury's authority. *See* memorandum from (b) (6) to Legal Files, "Interpretive Authority--Reserve Bank Fiscal Agency Powers" (May 16, 1997.)

6. Request for Section 13(3) Authority

This document was borrowed from (b) (6), of the Federal Reserve Bank of Kansas City. The editor believes that it was a draft proposal, written in February, 1999, to be submitted to SCRRM. It seems to provide a reasonable basis for a Section 13(3) request, but should not be treated as anything other than a drafting aid.

H. Brief

The memorandum of law, drafted by (b) (6), is specifically designed for one problem: an intraday attachment of the CHIPS account with FRBNY. Much of the analysis in this memorandum of law draws upon a draft memorandum in the Doomsday Book from (b) (6) to Legal Files, "Special Deposits" (July 25, 2001.) Other background to this memorandum of law came from the attempted garnishment by Granville Gold Trust of accounts kept with FRBNY.

IV. Description of Post-2008 Legal Documents

We here discuss the legal documentation that was created as a response to the financial crisis of 2008-09. This documentation includes every facility that the Federal Reserve Bank of New York has employed, with the exception of the Term Auction Facility (TAF). It also includes the March 14, 2008 non-recourse bridge loan from FRBNY to Chase for the benefit of Bear Stearns. It treats this document as part of the

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Maiden Lane I package.

These documents are arranged in a fairly arbitrary order, starting with the Maiden Lane documentation, and followed by the other documents in alphabetical order. To make more sense of this, we here present a chronological sequence of the facilities, with a brief discussion of each.

The TSLF (acronym for "Term Securities Lending Facility") was the original facility, authorized on March 11, 2008. This facility allowed primary dealers to access additional liquidity. FRBNY lent Treasury securities against less liquid collateral: mortgage-backed securities, including private-label securities. The TSLF raised some interesting questions of Reserve Bank powers, especially as private-label securities were involved, as well as GSE securities, which have long been considered eligible under Section 14 of the Federal Reserve Act. A number of powers opinions document these issues.

The competition for priority between the PDCF and the Maiden Lane I facilities was a close one. They were practically simultaneous in origin, although the Maiden Lane I deal took longer to structure and close. I will award it to the PDCF (acronym for "Primary Dealer Credit Facility") and discuss it first. It is conceptually simple: a repo facility with the FRBNY providing liquidity. FRBNY used facilities of the clearing banks, and accepted any collateral handled by the clearing banks, at the clearing banks' collateral haircuts. Maiden Lane I took place in two stages. First, there was a nonrecourse weekend conduit loan that FRBNY extended to tide Bear Stearns over the weekend. Second, FRBNY in effect acquired assets from JP Morgan Chase in conjunction with Morgan's acquisition of Bear Stearns. The second transaction took several months to close. Once closed, Maiden Lane I was the vehicle to hold these assets, with a distribution waterfall that had Morgan sandwiched between FRBNY entitlements.

Lehman week followed., with the AIG loan and the AMLF facility almost immediately behind it in mid-September. The Board approved the Commercial Paper Funding Facility ("CPFF") in early October, and it was implemented by the end of the month. The Money Market Investor Funding Facility ("MMIFF") had about the same timing. The Term Asset-Backed Securities Loan Facility ("TALF") followed in November, as did Maiden Lane II and Maiden Lane III. The ILFC transaction was in early 2009.

A. Maiden Lane I (June 26, 2008)

i. PC Docs Folder #280745..10/01/10

This documentation was prepared by (b) (6) on behalf of the Federal Reserve Bank of New York ("FRBNY.") Parties (and capacities) included

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FRBNY (Controlling Party, Tranche A Lender), Maiden Lane LLC (Borrower), JP Morgan Chase & Co. (Tranche B lender), State Street Bank & Trust Co. (Collateral Administrator), and BlackRock Financial Management, Inc. (Investment Manager). There are also a number of servicers and other parties with roles in the deal. It is tantamount to a purchase by a special-purpose LLC of Bear Stearns assets. The LLC is funded primarily by FRBNY, with some funding provided by JP Morgan, and the distribution waterfall reflects this. A brief description of this transaction may be found in http://www.newyorkfed.org/markets/maidenlane.html

ii. "Annex to Operating Circular 10"(Non-recourse loan) (#264266)................03/14/08

This document was prepared in-house. It is a non-recourse loan by FRBNY to JP Morgan Chase, part of a back-to-back conduit loan. To avoid entanglement in cross-default clauses, the borrower has the option of selling the collateral to FRBNY. The document does not mention Bear Stearns, the firm from which the collateral originated. The most recent version of the document contains one correction of an error in the executed version. Paragraph 2.3 of the executed version inadvertently referred to JP Morgan Chase ("Borrower") as FRBNY ("Bank.") The most recent version fixed this, for the convenience of future users of this document.

B. *Maiden Lane II*

PC Docs Folder #313296..01/21/10

This documentation was prepared by (b) (6) on behalf of the Federal Reserve Bank of New York. This transaction was similar in purpose and structure to Maiden Lane I: an acquisition by a FRBNY-controlled LLC of AIG subsidiaries' mortgage security assets, with the purchase price funded by FRBNY. There was some seller financing of this transaction, funded by a downward adjustment in price, to be compensated by proceeds from the asset liquidation, paid after FRBNY was paid in full. FRBNY would get most of the residual value (if any), with AIG getting the rest. A brief description of this transaction may be found in http://www.newyorkfed.org/markets/maidenlane.html

C. *Maiden Lane III*

PC Docs Folder #313298..12/23/10

This documentation was prepared by (b) (6) on behalf of the Federal Reserve Bank of New York. The LLC purchased reference assets from banks, upon payment of the notional value. In return, the banks released AIG's derivatives subsidiary from the associated credit default swaps, which were hedging the banks from the downside risk of the reference assets. AIG compensated FRBNY with subordinated funding of the LLC. The residual share of the LLC after asset liquidation shall be split between AIG and FRBNY. A brief description of the transaction may be found in http://www.newyorkfed.org/markets/maidenlane.html

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D. AIG Lending Agreement

PC Docs Folder #284970 .... 01/19/11

This documentation was prepared by (b) (6) on behalf of the Federal Reserve Bank of New York. The agreement is structured as a secured loan from FRBNY to AIG. The folder contains a complete compendium of AIG documentation, including some ancillary material such as GAO reports. It therefore provides a historical window into the entire history of the relationship between AIG and FRBNY, until the time of termination of the agreement. For more information on AIG lending (including publicly-released documents) see http://www.newyorkfed.org/aboutthefed/aig/.

E. AMLF

We do not have the documentation for the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility ("AMLF"), which was prepared by the Federal Reserve Bank of Boston. Neverthless, we mention it here for completeness. The AMLF lent to banks and bank holding companies for the purpose of buying asset-backed commercial paper from money market mutual funds. The lending was on a non-recourse basis, matched to the maturity of the commercial paper, with loans made at the full value of the collateral. For more details on this program, see http://www.bostonfed.org/bankinfo/qau/wp/2010/qau1003.pdf

F. CPFF

PC Docs Folder #286269 .... 10/20/08

This documentation was prepared by (b) (6) on behalf of the Federal Reserve Bank of New York. The CPFF involved a FRBNY-funded LLC that purchased commercial paper directly from issuers through commercial paper dealers, at a 200 basis point spread to the overnight index swap rate for unsecured commercial paper, and 300 basis points for asset-backed commercial paper. The 200 basis point spread divided into a 100 point spread for credit risk, and an additional 100 points, which could be waived if the issuer provided adequate credit enhancement. See http://www.newyorkfed.org/markets/cpff.html for details. Board Legal believed that this additional spread was required for compliance with the language of Section 13(3). FRBNY Legal did not take a position on this.

G. ILFC

Folder #311433 .... 07/09/10

This documentation was prepared by (b) (6) on behalf of the Federal Reserve Bank of New York. It is closely related to the AIG lending agreement. ILFC ("International Lease Finance Corporation") was an aircraft leasing subsidiary of AIG that required separate liquidity assistance, funneled through AIG in a back-to-back lending arrangement. This back-to-back structure complied with the extant Section 13(3) authorization of lending to AIG, and did not require a new one, as a direct loan structure

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would have required. The ILFC transaction is not independently described on the New York Fed website.

H. MMIFF

Folder #299155 ....11/03/09

This documentation was prepared by (b) (6) The Money Market Investor Funding Facility was designed as a liquidity backstop for money market mutual funds. (Although a Section 13(3) facility, it was bank-designed.) The MMIFF family of SPVs bought commercial paper and CDs from the mutual funds. The mutual funds received 90% cash and 10% asset backed commercial paper from the SPV. The SPV was 90% financed by FRBNY, and 10% by the seller mutual funds through their acceptance of commercial paper. For more details on this program, see http://www.newyorkfed.org/markets/mmiff.html. Unlike the CPFF, it was intended to support mutual funds that bought commercial paper, rather than the market for commercial paper.

I. PDCF

Folder #324916 ....02/08/11

This documentation was prepared in-house by the Federal Reserve Bank of New York Legal Department, and by the clearing banks. It is essentially a tri-party repo under Section 13(3) authority, with FRBNY acting as lender, the primary dealers as borrowers, and the clearing banks as tri-party intermediaries. It uses clearing bank documentation to establish the legal relationship among the parties. FRBNY documentation sets fees, eligible collateral, and margins, with the rate set as the primary credit rate of the Discount Window. For more details on this program, see http://www.newyorkfed.org/markets/pdcf.html

J. TALF

Folder #294399 ....Constantly Updated

This documentation was prepared by several different law firms (depending on asset class) on behalf of the Federal Reserve Bank of New York. In essence, the Term Asset-Backed Securities Loan Facility ("TALF") is a non-recourse financing mechanism for asset-backed securities, intended to provide credit support and liquidity to this asset class. A borrower will obtain the non-recourse loan from FRBNY, posting asset-backed securities as collateral. If the loan defaults, FRBNY will sell to the loan to a liquidating SPV, in which the Treasury has a first-loss position. http://www.newyorkfed.org/markets/talf.html.

K. TSLF

Folder #326309 ....

This documentation was prepared in-house by the Federal Reserve Bank of New

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York Legal Department. This program lent Treasury general collateral (which as was good as cash) against mortgage securities. In effect, it was a repo program accepting mortgage securities as collateral. Since it accepted private-label mortgage securities as well as GSE securities, it was partially authorized by Section 13(3), as well as the incidental powers of Federal Reserve Banks. For more details on this program, see http://www.newyorkfed.org/markets/tslf.html

V. Discussion of Memoranda

This section is an introduction to the memoranda. They vary widely in function. Some of them are legal opinions of Bank powers. Others are advisory. Yet other memoranda can be viewed as the "legislative history" of specific agreements, and help interpret the agreements and place them in context. Finally, some memoranda are included because they are good background reading.

These memoranda have different intended audiences. The powers memoranda are written "for the record." Their main function is documentary rather than advisory: to establish that this Bank is careful to avoid acting outside the scope of its legal powers, even in emergency situations.

The advisory memoranda are not so much intended "for the record," but rather to provide a framework of legal advice to those acting in emergencies. Of course, they cannot provide advice tailored to a situation unimagined when these memos were written. However, these advisory memos can provide a general basis from which more fact-specific advice can be offered. Some of these memos are very technical, intended primarily for lawyers. Others are more in the nature of lawyer-client communications.

And finally, the background material may be worth reading in advance. Some of it is primary source material, likely only to be of research interest. But much of this background material is a retelling of past crises, knowledge which may be useful in the future.

A. Powers Opinions

The powers opinions discuss the legal authority of Federal Reserve Banks to provide various kinds of emergency services and facilities that they are not in the habit of providing under ordinary circumstances. These powers opinions generally do not discuss the policy advisability of exercising the emergency powers. Nor do they counsel clients on how to provide such facilities with maximum safety to this Bank. They only answer the prior question: "*can* the Bank do it?" They do not answer: "*should* the Bank do it?" or often even "*how* should the Bank do it?"

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Many of these powers opinions were drafted in response to specific emergency situations, but some of them are responsive to general contingency planning concerns. Unless otherwise stated, they do not represent outer limits to the Bank's powers.

Before looking at the individual categories of powers opinion, it is worth noting that Board legal and FRBNY legal staffs take a very different view of powers analysis, and have done so for a long time. (Compare, *e.g.*, the 1968 (b) (6) and (b) (6) memoranda: ## 279410 and 279407.) Much of this difference is doctrinal: interpreting the grant of incidental powers in Section 4 of the Federal Reserve Act. The Board legal staff applies a classical incidental powers analysis: the more austere cases of the pre New Deal era. The FRBNY legal staff takes advantage of postwar OCC cases, especially NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co., 513 U.S. 251 (1995). One FRBNY attorney has attempted to set out a formal incidental powers analysis adapted to the Federal Reserve Act: (b) (6) to Legal Files, "Notes on Federal Reserve Banks' Incidental Lending Powers—Notably Securities Lending" (#232538) (July 7, 2007). However, even when Reserve Bank attorneys use Board Legal's analytic tools, they still tend to have a more expansive view of Reserve Bank powers than the Board's legal staff.

1. Section 10B, 13(2), 13(3) and 13(13) Authority

i. (b) (6) to Legal Files, "DFMU Lending Authority: Repo and FX Swap" (#334866) 09/27/11

ii. (b) (6) (b) (6) (b) (6) (b) (6) to Board of Governors, "The authority of the Federal Reserve to provide a primary dealer credit facility" (#281544)....................04/02/08

iii. (b) (6) to Legal Files, "Section 13(3) Lending Authority to Foreign Central Banks (#229381) 09/10/07

iv. (b) (6) and (b) (6) to (b) (6) "Section 13(3) Lending Authority Disclosure Requirements" (#50269) 03/10/99

v. (b) (6) to (b) (6) "Ability of Reserve Banks to Lend to Foreign Central Banks" (#41959) 07/16/98

vi. (b) (6) to Legal Files, "Sections 10B and 13(3) of the Federal Reserve Act" (#61742)....................02/26/97

vii. (b) (6) & (b) (6) to (b) (6) "Authority of the Federal Reserve to lend to Orange County" (#98979) 12/15/94

viii. (b) (6) to (b) (6) "FDICIA Section 142—Discount Window Operations" (#100587) 04/17/92

ix. (b) (6) to (b) (6), "Federal Reserve Discount Window Authority to Lend to Broker/Dealers" (#99008)....................02/28/90

x. (b) (6) "Emergency Liquidity Assistance to a Non-Bank" (#100592)....................10/15/89

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xi. Board of Governors, "Eligibility for Discount of Mortgage Company Notes," 56 Fed. Res. Bull. 39 (#275469) (1970)..
xii. Board of Governors, "Advances and Discounts by Federal Reserve Banks," 56 Fed. Res. Bull. 940 (1970) (#100106)..11/23/70

Perhaps surprisingly, this section is not particularly significant. There are a few reasons for this. I present them in ascending order of importance. First, the legal basis of ordinary discount window lending is well-established, and does not require ongoing opinion practice. Much emergency lending is a straightforward adaptation of well-understood powers, including things like the Term Auction Facility ("TAF.") Second, some of the more interesting work on lending authority concerns international lending. This is discussed separately, below. Third, and more importantly, most of the older emergency lending opinions are obsolete. The events of 2008-2009, and the subsequent enactment of Dodd-Frank, have transformed the law of emergency lending. Finally, traditional liquidity lending is not that important: the solvent-but-illiquid bank is a poor model for emergencies. Instead, the problems are those of insolvent banks and illiquid markets. Therefore, the most interesting work of 2008-09 involved asset purchases and nonrecourse lending, rather than recourse lending on the security of assets.

Most of these opinions, then, are only of historical interest. Their conclusions are clearly authorized, either by the language of Dodd-Frank or by practice. Perhaps most interesting today is the 2008 Board Staff opinion finding authority for the PDCF and the 1997 (b) (6) opinion, which suggests that banks may receive Section 13(3) loans as well as Section 10B loans. The (b) (6) opinion raises some interesting issues of non-standard lending authority to banks. For example, bank consortia may receive Section 10A loans as an alternative to Section 10B. The Board opinion on mortgage company notes is interesting, in this light. It seems to separate Section 13(2) from the real bills doctrine that appears to limit the scope of its operation. This suggests that Section 13(2) might have an asset-purchase role parallel to Section 13(3), without the need for Board supermajority approval, and without Section 13(3)'s constraints. Section 13(2) lending, of course, is limited to banks.

The (b) (6) and (b) (6) memoranda concern "conduit lending:" nonrecourse lending to banks under Section 10B authority for the purpose of funding nonbanks. Conduit lending was arguably used in the 2008 loan to Bear Stearns, although it is possible that this transaction was conducted under Section 13(3) authority. The (b) (6) memorandum in the "Asset Purchase Authority" section below (#281545) raises this possibility, although the (b) (6) memorandum (#264279) asserts only Section 10B authority. For more detail, see the (b) (6) history (#336726), at 187-88.

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This section may become more interesting in the future, as the contours of new Section 13(3) powers become better defined through experience.

2. Securities Lending, Repo, and Fed Funds

i. (b) (6) and (b) (6) to (b) (6) "Authority to Pay Interest to Primary Dealers on Cash Balances Held in Margin Accounts" (#336754)....11/__/11

ii. (b) (6) & (b) (6) to (b) (6) & (b) (b) (6)(b) (6) "Authority for the Federal Reserve to Purchase Fed Funds" (Draft) (#280160)....06/06/08

iii. (b) (6) (b) ((b) (6) to Legal Files, "Power of Reserve Banks to Purchase Fed Funds" (#265221)....04/15/08

iv. (b) (6) (b) (6) (b) (6) (b) (6) to Board of Governors and the Federal Open Market Committee, "Authority to engage in securities lending activities with primary dealers" (#280373) 3/10/08

v. (b) (6) (b) (b) (6) to Legal Files, "Modification to Securities Lending Facility" (#256004)....01/16/08

vi. (b) (6) (b) (6) "Foreign Securities Lending" (#297078).01/29/97

vii. (b) (6) "Exchange of Maturing Securities" (#176746) (Draft)....06/20/06

viii. (b) (6) to Distribution List, "Statutory Analysis: Overnight Cash Balance at Domestic Triparty Repo Custodian" (#121375) 09/09/05

ix. (b) (6) (6) (b) (b) (6) "Domestic Tri-Party Repo" (#98976).08/10/99

x. (b) (6) (b) (6) (b) (6) "Authority to Engage in Reverse Repo Agreements" (#48139)....04/16/97

xi. ((b) (6) to Federal Open Market Committee, "Legality of plan for lending Government securities by Federal Reserve Banks" (#279410) 07/10/68

xii. (b) (6) (Draft), "Authority of Federal Reserve Banks to 'Lend' Government Securities" (#279407)....06/06/68

These opinions underlie most of the basic domestic open market operations of the Federal Reserve System: repo, fed funds, and securities lending.

They are interesting for two reasons. First, they underpin the TSLF facility offered by the Federal Reserve in 2008: one of the few facilities that was not based on Section 13(3) powers. (The Term Auction Facility, based on Section 10B, was another exception.) Second, the power to lend securities is one of the few incidental powers that has been long asserted by the Federal Reserve System. This power clearly shows the interpretive differences between the Board and FRBNY legal staffs. Board Legal has consistently argued for a narrow interpretation of Reserve Bank incidental powers; FRBNY Legal has consistently argued for a broader interpretation of these powers.

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These historical differences were reversed in the Board Staff's opinion on the TSLF. The key language: "As discussed in the accompanying memorandum from staff at the FRBNY, current market conditions continue to indicate that lending U.S. Treasury securities by the FRBNY is reasonably necessary to allow the effective implementation of open market operations and monetary policy." The conflates the powers granted in Section 14 of the Federal Reserve Act with the statutory policies contained, *inter alia*, in the preamble to the Federal Reserve Act, Section 2A of the Federal Reserve Act, and Section 12A(c) of the Federal Reserve Act. This seems to mean that Reserve Banks possess any open-market power not precluded or conditioned by Section 14, as long as it is reasonably necessary to effect statutory policies.

The (b) (6) opinions discuss repo powers: a set of powers that has generally expanded over the 1990s and the last decade. Other repo powers opinions include those discussing options on repos (#283945, in "Asset Purchase Authority", below), and foreign currency reserve repos ((#161058, in "Borrowing, Gold Lending, and Foreign Exchange Powers", below.)

3. Loan Restructuring, Guarantees and Equity Kickers

i. (b) (6) (b) (6) to Legal Files, "AIG Loan Restructuring—Reserve Bank Powers" (Draft) (#286371)....10/21/08
ii. (b) (6) (b) (6) (b) (6) (b) (6) to (b) (6) "Bank Authority to Issue a Guarantee" (#281797)....07/25/08
iii. (b) (6) (b) (6) to (b) (6), "Equity Kickers and Reserve Bank Loans" (#280304)....07/11/08
iv. (b) (6) (b) (6) to (b) (6) "Authority of Reserve Banks to Issue Guarantees on Behalf of Depository Institutions" (Draft) (#232613)....08/27/99
v. 63 Federal Register 65693, "Federal Home Loan Bank Standby Letters of Credit (12 C.F.R. §§ 938, 943) (#100111)....11/30/98
vi. (b) (6) to (b) (6) "REI/authority to acquire a firm under incidental powers" (#75589) 09/26/90

These opinions are primarily about incidental lending powers of Federal Reserve Banks, and become very important in 2008. Lenders often receive equity kickers to compensate for risk. FRBNY (or maybe Treasury) received something akin to an equity kicker in the AIG loan, but the scope of this power is still uncertain, especially whether the National Bank Act restrictions on equity kickers apply to Reserve Banks. (The July (b) (6) memo asserts that they do not.) Lenders sometimes employ guarantees appurtenant to financial transactions, and often employ guarantees in workout contexts. The (b) (6) (b) (6) memo, the October (b) (6) memo, and the (b) (6) draft memo all explore the limits to the guarantee power.

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Neither the equity kicker nor the guarantee issue has been resolved by Dodd-Frank, since the Federal Reserve issued no guarantees pursuant to Section 13(3) and arguably did not accept an equity kicker from AIG. Therefore, these opinions are still live—applicable to future emergency lending.

It is worth noting that Board Legal has so far rejected these FRBNY positions on guarantees, but it has not articulated any specific disagreements with FRBNY's legal reasoning.

4. Asset Purchase Authority

i. (b) (6) (b) (6) to Legal Files, "Analysis of the Legal Authority for the Bear Stearns Transaction" (#265951) 04/16/08

ii. (b) (6) (b) (6) (b) (6) (b) (6) to Board of Governors, "The authority of the Federal Reserve to provide an extension of credit in connection with the acquisition by JP Morgan Chase of Bear Stearns" (#281545) 04/02/08

iii. (b) (6) (b) (6) (b) (6) (b) (6) to Board of Governors, "The authority of the Federal Reserve to provide an extension of credit to Bear Stearns through JP Morgan Chase" (#281545) 04/02/08

iv. (b) (6) to Legal Files, "FRBNY Powers to Enter Into Nonrecourse Lending Transactions" (#264279) 03/14/08

v. (b) (b) (6) (b) (b) (6) "Non-recourse Lending Under Section 13(3) of the Federal Reserve Act" (#221636) 07/30/07

vi. (b) (b) (6) to Legal Files, "Section 14(b)(1) Municipal Securities" (#65648) 09/01/00

vii. (b) (6) (6) (b) (b) (6) "Options on Repurchase Agreements" (#283945) 08/10/99

viii. (b) (b) (6) to Legal Files, "Nonrecourse Lending under Section 10B of the Federal Reserve Act" (#49514) 07/29/97

ix. (b) (6) (b) (6) "Reserve Bank purchase of agency obligation Section 14(b)(2)" (#98980) 02/17/89

The opinions collected here divide into two categories: old and new. The newer opinions (post-2000) are historically important, as they were the underpinnings for many of the 2008-09 facilities that relied on Section 13(3) of the Federal Reserve Act to purchase assets. (The fulcrum of the Board's opinions was that Section 13(3) discounting directly authorized asset purchases; FRBNY placed more reliance on Section 13(3) nonrecourse lending authority.) However, since the Federal Reserve's Section 13(3)

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facilities were directly ratified by Dodd-Frank, the legal reasoning employed by these opinions is now mostly of historical significance.

The older memos (and the (b) memo, which supplements the 1997 (b) (6) memo) do not depend on Section 13(3), and therefore remain independently useful. The 1997 nonrecourse lending memo is particularly useful. It is limited in scope to Section 10B of the Federal Reserve Act, which was not subjected to the limitations on asset purchases imposed by Section 13(3) by the Dodd-Frank Act. (b) (6) draft memo (#221636) explores extending the conclusion of the 1997 memo to Section 13(3) of the Federal Reserve Act, but it never became a formal opinion.

5. Gold Lending and Foreign Exchange Powers

i. (b) (6) to Legal Files, "Power to Transact with CLS Bank" (#335736) 10/06/11
ii. (b) (6) (b) (6) "Providing Dollar Liquidity to Foreign Central Bank Customers"(#109977)....02/27/06
iii. (b) (6) to Legal Files, "Authority of FRBNY to Engage in Repo Transactions with Foreign Currency Reserves" (#161058) 01/24/06
iv. (b) (6) to Distribution List, "Statutory Analysis: Overnight Cash Balance at Foreign Euro Triparty Repo Custodian" (#131222) 09/09/05
v. (b) (6) (b) (6) "Treasury: Money Employed Account for DM Repos" (#283633) 05/16/96
vi. (b) (6) (b) (6) "Cable transfers/foreign exchange and Section 14 of the Federal Reserve Act" (#204884)....01/30/91
vii. (b) (6) "Legal Basis for Foreign Currency Operations" (#278193) (Draft from Board Staff)....12/13/89
viii. (b) (6) to (b) (6) "Legal Authority for Foreign Exchange Operations" (#211504) 12/07/89
ix. (b) (6) (b) (6) "National Bank of Kuwait/Request for Foreign Exchange Clearing Facility" (#98995)....09/18/90
x. (b) (6) to (b) (6) "Authorization to invest foreign currency funds" (#212905) (March 3, 1986)
xi. (b) (6) to (b) (6) "Section 2(a) of the Gold Reserve Act of 1934" (#98997)....02/04/83
xii. (b) (6) (b) (6) to (b) (6) "Gold Loans"(#189493) 04/19/76

Superficially, there does not seem to be much of a common thread among the gold lending and foreign exchange powers of a Reserve Bank. However, the gold lending and foreign exchange powers of a Reserve Bank are closely entwined. In the days of the gold standard, international transactions among different currencies ("cable transfers") were

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ultimately settled in gold. And the power to engage in foreign exchange transactions presupposes a power to borrow foreign exchange: the topic of several of these memoranda. Although the (b) (6) and Board Staff opinions are purely domestic in scope, they can be conveniently placed with these other opinions.

Of the foreign exchange opinions, the (b) (6) and (b) (6) memoranda are the most significant. They give a reasonable basis for analyzing Reserve Banks' swaps power, which is commonly exercised. Other swaps memoranda are included for historical interest, including the (b) (6) and (b) (6) memoranda.

The Federal Reserve Act clearly authorizes gold loans, although they have not been recently contemplated. The memoranda here explore the limits of this power, the most significant of which come from the Gold Reserve Act of 1934. The conclusion of these memoranda is that gold lending—if ever desired—probably requires a Treasury license as a practical matter, or a Treasury interpretation that the Gold Reserve Act is no longer in force, or some form of Treasury approval.

The (b) (6) opinion is partially obsolete, since the CLS Bank has eliminated FX settlement risk, at least for CLS Bank currencies. However, this memorandum contains one very interesting conclusion: that Reserve Banks have the power to take special deposits.

6. Access to Federal Reserve Services

i. (b) (6) to (b) (6) (b) (6) "Federal Reserve Bank Powers to Provide Overdraft Capacity to Broker-Dealers" (#315862) 10/09/02
ii. (b) (6) to Legal Files, "Is the Power to Establish an Account Incidental to Section 13(3) Lending Authority?" (Draft) (#40899) 05/15/98
iii. (b) (6) to (b) (6) "Foreign bank branch and agency discount window access" (#98986)....01/02/96
iv. (b) (6) (b) (6) to (b) (6) "Federal Reserve Bank Powers to Provide Nonbank Dealers with Government Securities Clearance Services" (#98991)....05/04/95
v. (b) (6) (b) (6) "Authority of the FDIC to Open Receivership Accounts at a Federal Reserve Bank," (#224718)....04/14/88
vi. (b) (6) to (b) (6) "Reimbursement from the Treasury for fiscal agency services" (#144576)....08/28/86
vii. (b) (6) to (b) (6) "Authority of Treasury Department to Indemnify Bank" (#144522)....03/26/82
viii. (b) (6) and (b) (6) to (b) (6), "Reimbursement to this Bank for fiscal agency activities performed at the direction of the Treasury" (#144421)....03/28/80

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ix. (b) (6) to (b) (6) "Legal Authority of Reserve Bank to Permit Reserve Account Overdrafts" (#105569) 01/15/80

x. (b) ((b) (6) b) ((b) (6) to (b) (6) "Government unlimited liability to a Federal Reserve Bank" (#125478) 06/13/75

Many of these opinions were supplanted, in effect, by the events of 2008 and 2009 and the re-enactment of Section 13(3) that ratified most Federal Reserve actions taken during this period. Other opinions are the basis for standard Reserve Bank powers that are unquestioned today, especially those related to overdrafts and fiscal agency. The main utility of these opinions is therefore in their historic value.

The PC Docs reference to the (b) (6) memo is to a folder that contains several other older memos, as well as the (b) (6) memo. I do not separately list them here.

7. Borrowing and Miscellaneous Powers

i. (b) ((b) (6) to Legal Files, "Does Dodd-Frank Section 806(b) Grant Takeout Lending Authority?" (#333443) 08/20/11

ii. (b) (6) (b) (6) to (b) (6) (b) (6(b) (6) "Authority for the Federal Reserve to Purchase Fed Funds" (Draft) (#280160)...06/06/08

iii. (b) (6) (b) ((b) (6) to Legal Files, "Power of Reserve Banks to Purchase Fed Funds" (#265221)......................04/15/08

iv. (b) (6) (b) (6) "Authority of Reserve Banks to borrow funds denominated by a foreign currency" (#98994)..05/24/96

v. (b) ((b) (6) "Power of a Federal Reserve Bank to Serve as the Receiver in an Edge Corporation Insolvency" (#98996) 04/17/95

These opinions could not be put anywhere else. The first one parses the language of Dodd-Frank, to ascertain whether the proceeds of a loan to a designated financial market utility ("DFMU") could take out prior creditors, notwithstanding Dodd-Frank's requirement that the borrower not have access to adequate credit. This opinion is relevant to Section 13(3) lending, which has a similar requirement.

The second through fourth opinions related to a Reserve Bank's power to borrow. The (b) (6) opinion is the most careful of the three. It, and the Board staff opinion (which remained in draft), were drafted in a peculiar context: Reserve Banks wanted to borrow money in order to pay interest on its liabilities. This context is obsolete for the time being. Reserve Banks obtained the statutory power to pay interest on reserves, and therefore do not need to borrow on the Fed Funds market or otherwise. However, (b) (6) is probably the best overall opinion on the borrowing power

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of Reserve Banks. This power underlies a number of the international powers opinions, as does the (b) (6) opinion.

The elaborate reasoning of this Edge Corporation opinion is probably obsolete, in light of modern incidental powers analysis, especially the VALIC case. (*NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.,* 513 U.S. 251 (1995).) But the conclusion is still a valid one.

8. Statutory Interpretation Techniques

i. (b) (6) to Legal Files, "Legislative Reenactment and Section 13(3)" (#335560)........10/26/11
ii. (b) (6) (b) (6) to Legal Files, "Applicability of Title 8 of Dodd-Frank to Foreign Financial Market Utilities" (#328979) (Draft)........03/25/11
iii. (b) (6) (b) (6) to Legal Files, "Notes on Federal Reserve Banks' Incidental Lending Powers—Notably Securities Lending" (#232538)........12/24/07
iv. (b) (6) (b) (6) "Why a Reserve Bank Can Deal in Mortgage and Commercial Paper" (#232316)........08/24/07

Although most of these memoranda seek to establish some legal point or another, they are better viewed as exemplars of statutory interpretation techniques. The (b) (6) memo is particularly significant, since the history of the Federal Reserve Act is one of administrative interpretations followed by Congressional tinkering. ((b) (6) was not admitted to the bar as of October 2011, so this memorandum cannot be taken as legal advice.) The legislative reenactment doctrine holds that the subsequent Congressional tinkering is generally a ratification of the administrative interpretation. This is particularly useful, as some of the administrative interpretations of the Federal Reserve Act (notably foreign exchange powers) were made using techniques of statutory construction that are disfavored today, such as gleaning a meaning from legislative history that appears unsupported by the text of the statute. It is also the most straightforward basis for the argument that the Dodd-Frank Act was Congressional approval of most Federal Reserve constructions of Section 13(3) of the Federal Reserve Act.

The March, 2011 memorandum is a discussion of the extraterritorial scope of some Federal Reserve lending powers. It incorporates a detailed analysis of *Morrison v. Nat'l Australia Bank, Ltd.*, __ U.S. __, 130 S.Ct. 2869 (2010); the Supreme Court's latest word on interpreting the extraterritorial scope of Congressional statutes.

The December, 2007 memorandum is a close analysis of *NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.,* 513 U.S. 251 (1995) ("*VALIC*"), as it applies to the Federal Reserve Act. This analysis is a bone of contention between the legal departments of the Board and FRBNY. Board lawyers do not believe that *VALIC*

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applies to the Federal Reserve Act at all, and instead prefer the narrow form of incidentality analysis that applied to national banks in the prewar years. The December, 2007 memorandum takes a contrary position, and attempts to tailor *VALIC* analysis to the very different structure of the Federal Reserve Act.

The August 2007 memo is an imaginative—but very preliminary—analysis of Section 14 of the Federal Reserve Act.

B. History and Policy

i. (b) (6) (b) (6) (b) (6) "Federal Reserve Credit Initiatives During the First Year of the Meltdown: August 2007 to Mid-2008" (#336726) 10/11
ii. (b) (6) (b) (6) (b) (6) "Primary Dealer Status of Salomon Brothers, Inc. 1991-1992 (# 325151)....10/04/10
iii. Compilation of Board of Governors financial crisis actions under Section 13(3), 13(13), and 23A/B of the Federal Reserve Act, the BHC Act, the FDI Act, Regulation D, and other provisions of law (#324528)....09/29/10
iv. (b) (6) "Financial Crisis Manual" (#337857)....09/09
v. "Managing Financial Crisis: A Primer" (Principal author: (b) (6) (#146701)....Fall, 2005
vi. (b) (6) "Chronology of Events at the Federal Reserve Bank of New York After the World Trade Center Attack" (#77924)....11/20/01
vii. (b) (6) (b) (6) (b) (6) "Legislative History of the Provisions of the Federal Reserve Act Relating to the Discount Window and Open Market Operations" (#60442)....03/21/00
viii. (b) (6) (b) (6) "The Origin of the Federal Reserve's Discount Window" (#67354)....05/29/97
ix. (b) (6) (b) (6) to Legal Files, "A Brief History of Repo Authority for Federal Reserve Banks (#283634)....05/23/96
x. FRBNY, "A Report on Drysdale and other Recent Problems of Firms Involved in the Government Securities Market" (#199042)....09/15/82
xi. (b) (6) (b) (6) "Lending Functions of the Federal Reserve Banks: A History" (#337421)....05/73

The Doomsday Book places very little emphasis on the appropriate role of the Federal Reserve in emergency situations. Most of the documents focus on "how to," rather than "why." The historical and policy memoranda included in this section are therefore exceptional, and deserve special treatment. Many of these memoranda focus on discrete crises from a Federal Reserve perspective: the Salomon crisis of the early 1990's, the World Trade Center attack, or the recent events of 2008-09. Other memoranda

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discuss broad swathes of time: *e.g.*, the pre-1970's Federal Reserve. The (b) (6) memo is the only one dedicated to crisis management.

1. First Year of the Meltdown

This is the first volume of a planned two-volume history of FRBNY's response to the events of 2007-09. (b) (6) of the Research Function, is the principal author. It is the result of a detailed combing through the archives, and oral history of participants. This volume is more than a detailed narrative. It is a significant compendium of Federal Reserve documents, and refers to a number of entries in the Doomsday Book.

If the title is not already sufficiently descriptive—"Federal Reserve Credit Initiatives During the First Year of the Meltdown: August 2007 to Mid-2008"—the authors provided us with a convenient statement of purpose. This document is a history of the first four facilities established to deal with the crisis: the TAF, the TSLF, the PDCF, and the single-tranche repo program. (Legal documentation for three of these programs is elsewhere in the Doomsday Book.)

> The target audience for this study is mid-level Federal Reserve officials ten or twenty years hence, some of whom will undoubtedly be embroiled in their own financial crises and who may wonder why the Federal Reserve chose to introduce four new credit facilities during the first year of what we will call "The Meltdown." To the best of our knowledge, there is no comparable narrative history of the Fed's response to other crises, such as the collapse of Franklin National Bank in 1974, the collapse of Continental Illinois National Bank in 1984 or the implosion of Long-Term Capital Management in 1998.

The Doomsday Book contains nothing on these three crises. (See (b) (6), *The Failure of the Franklin National Bank: Challenge to the International Banking System* (1980); http://www.fdic.gov/bank/historical/managing/history2-04.pdf (Continental Illinois); Roger Lowenstein, *When Genius Failed: the Rise and Fall of Long-Term Capital Management* (2000).)
However, the Doomsday Book does contain material on three other crises: the World Trade Center attack, the Salomon Brothers crisis, and the Drysdale crisis. All are discussed below. (The "Managing Financial Crises" document in this section contains a fairly comprehensive list of pre-2001 crises, and some documentation on them.)

2. Salomon Brothers

Although these memoranda are listed in the order of their preparation, the Salomon Brothers scandal is an old one, dating back to the early 1990's. This memorandum was written as part of the preparations for enlargement of the roster of primary dealers in 2010. This memorandum presents a brief timeline of the scandal, and a detailed history of the internal response of FRBNY to it, with an emphasis on Legal's role.

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The Salomon scandal was very tricky legally, because FRBNY's main formal power was exclusion of Salomon as a primary dealer, which would have been an effective death sentence. Many of the legal memos sought to cobble together intermediate legal powers from common law materials. Another interesting aspect of the Salomon scandal was the irrelevance of the Fed's primary tools: its balance sheet and its supervisory power. The Federal Reserve had no formal supervisory power over Salomon, and liquidity support was irrelevant to the resolution of this crisis.

A much more detailed external history of the Salomon Brothers scandal may be found in a public document: the "Joint Report on the Government Securities Market" (jointly issued by Treasury, the SEC, and the Board. The *Joint Report* may be found on the following URL:
http://www.treasury.gov/resource-center/fin-mkts/Documents/gsr92rpt.pdf (last visited November 2, 2011.)

3. Compilation of Board Actions

Although placed with historical works, this is a primary historical document. It is a compilation of all (or most) significant Board actions taken in connection with the financial crisis, from July 13, 2008 to December 16, 2008. It therefore does not contain authorizations for Bear Stearns, the PDCF (authorized March 16, 2008), TSLF (authorized March 11, 2008), or TAF. It also does not seem to contain final approvals for TALF facilities. It refers to various staff documents, but does not include them. It does, however, include the text of all Board authorizations. Contents:

- Section 13(13) lending "authorization" with regard to Fannie Mae and Freddie Mac. (The document is styled an "authorization" even though Section 13(13) lending authority only requires consultation with the Board. 12 C.F.R. § 201.4(d).) 07/13/08
- Broadening of eligible collateral for PDCF and TSLF to include anything acceptable to primary dealers, plus Section 23A relief for interaffiliate lending 09/14/08
- Authorizing extension of Section 13(3) credit to AIG 09/16/08
- AMLF authorization with concomitant Section 23A relief (Boston) 9/19/08
- Bank Holding Company formations for Morgan Stanley, Goldman Sachs and Merrill Lynch with concomitant Section 13(3) lending authorization to UK broker-dealer subsidiaries and US primary dealer subsidiaries 9/21/08
- Board approval of systemic risk exception for Wachovia 9/28/08
- Discussion with regard to Wachovia and commercial paper, no action 10/03/08
- Board approval of DMLF facility (Atlanta, Chicago) (This approval was rescinded by the Board on 10/10/08) 10/03/08
- Interim final rule (Regulation D) authorizing interest on Reserves 10/06/08

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- Approval in principle of CPFF 10/05/08
- Discussions on Wachovia, TAF, and DMLF, no action 10/06/08
- Section 23A waiver for unnamed bank...10/05/08
- Authorization for securities lending to AIG..10/06/08
- Acquisition by Mitsubishi-UFJ of 24.9 percent of Morgan Stanley..................10/06/08
- Approval of CPFF..10/07/08
- Approval of broad systemic risk exception for banking system........................10/13/08
- MMIFF authorization..10/13/08
- CPFF implementation 10/13/08
- Interim final rule enabling TARP money to be counted as Tier I capital..........13/13/08
- Easing terms on MMIFF...10/21/08
- Approving guarantees and financing to Citigroup..11/23/08
- Considering TALF..11/23/08
- Concurring with NCUA that it could lend for other than liquidity purposes.....11/23/08
- Approving Liquidity support to Citigroup's London broker-dealer.................11/23/08
- Approving new interest rate for reserves..12/16/08

4. Financial Crisis Manual

This document was prepared by the (b) (6) law firm, and is current as of September 2009. The document, designed as client briefing material, is a potpourri of topics. It discusses all governmental assistance programs, emphasizing Treasury's programs under the Emergency Economic Stabilization Act of 2008 ("EESA") (often informally called "TARP", even though the Troubled Asset Relief Program was only one program under this statute.) Although EESA is clearly the centerpiece of this document, it also discusses the other agencies' programs. The FDIC's Temporary Liquidity Guarantee Program ("TLGP") gets a separate discussion, as does the Federal Reserve's Section 13(3) authority, and the programs under it: Bear Stearns, AIG, the TSLF, the PDCF, the CPFF, and the AMLF.) It separately discusses the TALF program, which used both TARP and Federal Reserve money.

This public document is rich with links and citations. It can be viewed as complementary to the Garbade history, as well as the other public sources.

5. Managing Financial Crisis: A Primer

The title of this document is descriptive. It was prepared primarily by (b) (6) (b) (6) aimed at a general audience of junior bank officers. It contains valuable historical data, as well as being a solid primer on crisis management pre-2008. It contained very little on the need for market liquidity, which was the centerpiece of most of the 2008-09 lending facilities. Instead, it focused on money liquidity, and other crisis management tools: supervision, suasion, recourse lending, payment operations, and cross-border transactions.

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It also contains a brief potted history of most financial crises between 1985 and 2001, with some lessons learned. The very significant financial crises of the 1970's were outside its scope: Herstatt, Continental Illinois, and Franklin National Bank. It also omitted the financial crises that had little impact in the United States: BCCI, the UK "secondary banking" crisis of 1973-75, the Scandinavian crisis of the early 1990's. It missed or decided to omit a few crises: at least the Askin Capital Management crisis of 1994, the Drysdale crisis of 1982, and the Mexican crises of 1982. The crises it discussed, in chronological order:

- The blackout of 1977
- BoNY's operational breakdown (1985)
- The 1987 stock market crash
- Drexel (1990)
- Salomon (1991) (also discussed in a separate memo in this section)
- The blackout of 2003 (discussed with 1977 blackout)
- Mexico (1994) (there is no discussion of the earlier Mexican crisis)
- Asia/Russia (1997-98)
- LTCM (1998)
- Y2K (1999-2000)
- September 11, 2001 (also discussed in a separate memo in this section).

It also decided to omit the post-2001 events: Barings (early 1995), Enron (2001-02). Although Barings resulted in a very nervous weekend, Enron was a dog that did not bark in the night: a major financial participant whose abrupt insolvency did not create a financial crisis. This pattern was seen repeatedly until 2007: Amaranth and Refco are other examples from the decade.

Although this document would doubtless read very differently if prepared today, it is still a useful historical source and an excellent educational source.

6. Chronology of Events at the Federal Reserve Bank of New York after the World Trade Center Attack

The title of this memorandum is fully descriptive. It begins with the morning of September 11, 2001 and concludes with the full resumption of operations on September 24. It discusses all significant events: financial, operational, and humanitarian. This crisis, perhaps uniquely among all of the financial crises, involved almost every sector of this Bank, especially such traditional support functions as Building Services, Protection, and Medical. (Food Services is not on this list, because it traditionally goes into crisis mode

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along with the line functions, such as Legal, Supervision, Markets, and the operational functions.)

7. Legislative History of the Provisions of the Federal Reserve Act Relating to the Discount Window and Open Market Operations

This memorandum should be viewed as a supplement to (b) (b) (6) s book: *Lending Functions of the Federal Reserve Banks: A History* (1973). It contains substantial additions to (b) (6) work, particularly on open-market operations, post-1973 events and the legislative history of the Federal Reserve Act. However, this document, although current for its time (2000) is now mostly of historical and research interest. It has been supplanted in large part by the events of 2008-09 and the Dodd-Frank legislation of 2010.

8. Origin of the Federal Reserve's Discount Window

This memorandum is a brief history of the Discount Window before around 1970. It is complementary to (b) (6) s book and the legislative history discussed above. The memorandum builds on these more legal treatments, but primarily seeks to recreate the intellectual currents that animated Congress when it created these powers, especially the real bills doctrine. These ancient currents (or at least the ones that persisted) had considerable force as late as 2008. The Dodd-Frank Act, especially with its revision of Section 13(3) and its recognition of financial market utilities, may represent a conceptual break with the past.

9. History of Repo Authority

This draft memorandum is what it purports to be: a brief history of the Federal Reserve's repo authority. The memo contains little more than a brief recapitulation of and citations to primary sources: original Federal Reserve memos dating back to the 1920's. Unfortunately, the memo does not contain PC Docs references to these primary sources. (PC Docs was not in place in 1996, the year this memo was written.) It would be useful to track down the PC Docs references of these primary sources in a future version of the Doomsday Book, and add them to the primary source collection.

The Federal Reserve's current repo authority is unquestioned. However, the legal history of this authority could be useful if there is a need to extend it.

10. Drysdale

This document is a production of the Federal Reserve Bank of New York, not just the Legal Function. It describes the problems with the government securities dealers: Drysdale, Comark, and Lombard-Wall. These cases are reminiscent of the more recent MF Global insolvency: the intersection of financial intermediary insolvency with poor operations and collateral practices. These 1982 insolvencies probably caused more market

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agitation than MF Global, even though MF Global was a larger firm that became insolvent in a more troubled time. This is a good sign that legal contingency planning works: a better legal regime that defines rights more precisely makes a real difference. The Drysdale and related insolvencies gave rise to the Government Securities Act of 1986 and the repo amendments to the Bankruptcy Code of 1984, and helped motivate the 1994 revision to UCC Article 8.

11. (b) (6) History of Federal Reserve Lending

This is probably the most important historical document in the collection: a piece of original legal scholarship written by (b) (b) (6) the Board's general counsel at the time. It is an extensive legal history of Reserve Bank lending activities. It excludes open-market and international transactions controlled by the FOMC, but is otherwise a far-ranging inquiry into Reserve Bank powers, including repealed powers such as Section 13b lending or V-Loans, or such obscuranta as interdistrict discounts among Reserve Banks, or bankers' acceptance eligibility criteria.

The legal analysis is excellent and thorough and where necessary imaginative. The policy analysis reflects conventional early 1970's Federal Reserve public statements, and is generally less useful than the legal analysis.

C. Operational Issues

The memoranda of the third volume discuss legal aspects of operational issues: security interests, payments, and a miscellaneous subsection.

1. Security Interests

i. (b) ((b) (6) (b) (6) "The Fetishism of Physical Collateral" (#320292) 06/03/10

ii. (b) ((b) (6) to Legal Files, "Field Warehouses: An obsolete legal concept" (# 327234) 01/22/10

iii. (b) (6) ((b) ((b) (6) "Letter from Department of Education on Student Loan Securities and FRBNY Security Interests" (#335843) 12/30/08

iv. (b) (b) (6) to Legal Files, "Self-Help and Sovereign Immunity: There is no FSIA Immunity for Setoff and Nonjudicial Dispositions of Security Interests"....................08/07/07

v. (b) (6) (6), "Evaluation of Excess Treasury Collateral Procedures" (#97576)....................11/21/03

vi. (b) (6) ((b) (6) "In-Transit Securities" (#86794).........08/26/02

vii. (b) ((b) (6) (6) (b) (6) "On Lending to a Debtor who Has Previously Executed a Negative Pledge Agreement with a Creditor" (#45932)03/25/99

viii. (b) (6) (6) (b) (6) "All-Assets Pledge Risk Assessment" (#47597) 03/04/99

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ix. (b) (6) (b) (6) (b) (6) (b) (6) "Review of the Proposal to Offer the Single-Account Structure to Foreign Banks" (#99000) 01/30/97
x. (b) (6) (b) ((b) (6) (b) (6) (b) (6) "Mutual Funds Internal & External Borrowing Capacity" (#99001) 09/27/96
xi. (b) ((b) (6) (b) (6) "The Authority of Investment Companies and the SIPC to Borrow and to Pledge Assets" (#99002) 05/09/96
xii. (b) (6) (6) (b) (6) "Mutual Insurance Company's ability to pledge its assets to secure a loan" (#99003) 03/04/91

The memoranda here deal with various technical aspects of obtaining and perfecting security interests. There are few technical memoranda on UCC Article 9 *per se*. The memoranda of the last century are largely inapplicable, having been supplanted by Revised Article 9, promulgated in 1999 and effective July 1, 2001. In this decade, Reserve Bank attorneys have produced few formal Article 9 memoranda. Therefore, the Doomsday Book does not provide much help in straight Article 9 issues, and there is no adequate substitute for consulting an Article 9 attorney: (b) (6) (b) (6) (b) (6) or (b) (6) (b) (6) and (b) (6) are knowledgeable about many operational details. However, a few old memoranda (and two recent ones) may be useful.

The (b) (6) memorandum is probably the most useful one. It highlights some problems with the enforcement of interstate security interests: a problem inherent in the competing laws of fifty states. For foreign branches (and possibly state-chartered branches), it is uncertain whether security interests will be enforced if the bank liability is in one state but the property securing the liability is in another. The (b) (6) (b) (6) and (b) (6) memoranda highlight a significant problem: not all entities have unlimited power to pledge collateral. The first two memoranda arose out of a proposal from other Reserve Banks to take physical possession of collateral. These memoranda outline the risks of possession (or the virtual possession of field warehousing).

None of these memoranda discuss a very significant problem: property outside the scope of UCC Article 9. Most domestic property is within the scope of Article 9 (apart from realty), and we believe that we understand the law of securities in foreign depositories. However, some domestic property—particularly the obligations of governments—is not covered by UCC Article 9. In some cases (*i.e.*, ExImBank or Department of Education guarantees), we have obtained letters from the general counsel's office that provide comfort. But we have no such comfort for other collateral, including things like Small Business Administration-backed collateral that is routinely accepted at the Discount Window.

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2. Payments

i. (b) (6) (b) (6) to Legal Files, Draft "Special Deposits" (#75118) 07/25/01

ii. (b) (6) (6) (b) (6) "Will a 'Tested Fax Arrangement' be deemed a 'Commercially Reasonable Security Procedure' under UCC Article 4A?" (#56277)..........11/12/99

iii. (b) (6) (b) (6) to Legal Files, "On 'Conduit Lending' by a Federal Reserve Bank Through Another Bank (with Appendix)" (#46164) 01/06/99

iv. (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) "Overnight Payments and Credits While Accounting System is Shut Down" (#50507) ...05/16/97

Because the Doomsday Book focuses on the Bank's emergency powers, it seldom discusses the Bank's payment business—usually a routine operational matter. However, many exercises of the Bank's emergency powers involve payments, sometimes in unconventional manners. Unconventional payments—especially those to or routed through a party of weak solvency—create (or accentuate) unconventional legal risks of payments.

The 1997 "overnight payments" memorandum is particularly noteworthy. It is not primarily a risk analysis. Instead, it is intended to be read by and reassure emergency counterparties of the Bank. The intended recipient of this memorandum is a counterparty of this Bank, who needs assurance that this Bank can bind itself to a payment order, even if the Bank's accounting system is shut down. Therefore, this memorandum reads more like a powers opinion than an advisory memorandum. However, it does not so much articulate a corporate power of the Bank, as it assures a counterparty that certain acts by this Bank will create a binding obligation of the Bank.

Also worth noting is the draft memorandum discussing special deposits. A Reserve Bank probably has the power to accept special deposits: something discussed by one of the powers opinions. (b) (6) (b) (6) (b) (6) "National Bank of Kuwait/Request for Foreign Exchange Clearing Facility" (#98995) (September 18, 1990). A special deposit can be useful whenever an escrow is desired, or when a non-documentary analogue to a letter of credit is needed. (See the powers opinion: 63 Federal Register 65693, discussing a Federal Home Loan Bank's power to issue letters of credit. *See also* 12 C.F.R. §§ 938, 943.)

3. Miscellaneous

i. (b) (6) (b) (6) (6) (b) (6) "Risk Analysis of Section 13(3) Lending" (#232613) 08/10/99

ii. (b) (b) (b) (6) (b) (6) "Minimum Documentation Recommendation for Emergency Lending to DIs" (#51955) 05/07/99

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iii. (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) "December 31, 1999 Holiday Project: Summary of Relevant Holiday Laws" (#99009)..10/09/97

This section contains three memoranda that could not be classified elsewhere. The (b) (6) memorandum is a general risk analysis of emergency lending to debtors with whom this Bank is not familiar. The (b) (b) (6) memorandum discusses minimum documentation for emergency lending. The (b) (6) memorandum—prepared as an early part of this Bank's Y2K project—discusses bank holiday laws, and remains particularly useful. It was a main source, for example, on a recent emergency bank holiday memo filed elsewhere in the Doomsday Book. (b) (6) (b) (6) (b) (6) (b) "Governmental Authority to Close Financial Institutions" (#199023) (January 22, 2007).

D. Bankruptcy and Insolvency Law Issues

These memoranda are variations on a theme: the legal risks of lending to firms that are or subsequently become insolvent. These risks vary with the insolvency law applicable to insolvent firms. The Bankruptcy Code—which is applicable to ordinary nonfinancial firms as well as securities brokers and commodities merchants—probably poses the greatest lending risk, with its automatic stay, elaborate avoidance scheme, and risk of equitable subordination. OLA is similar. In contrast, New York Banking Law is relatively safe to secured lenders, as is the FDI Act.

These memoranda are no substitute for contemporaneous legal advice. The legal risks of lending begin with pre-lending deliberations, and persist through the lending process, subsequent workout efforts, the declaration of insolvency, and the subsequent insolvency proceeding. Affiliates of the debtor may have claims against the creditor. Most of these risks are very fact-specific, and the law remains in perpetual flux. Social attitudes continually oscillate between debtors and creditors, and common law courts will continually resurrect old doctrines and suppress newer ones. Statutory law changes are no less frequent.

1. Core Insolvency Law

i. (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) "Analysis of the 'Chapter 14' SIFI Insolvency Proposal (#333984) 09/13/11
ii. (b) (6) (b) (6) to Legal Files, "Section 718 of the Financial Services Regulatory Relief Act of 2006 and the Discount Window" (#192061)..........12/04/06
iii. (b) (6) (b) (6) "Requirements to Lift an Automatic Stay in an Insolvency Proceeding" (#57755) 12/24/99
iv. (b) (b) (b) (b) (6) "FCM Bankruptcy Regime" (#46583) 12/07/98

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v. (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) "Options Regarding Closure of Edge Corporation" (#99011) 07/28/94

As with security interests, there are comparatively few memoranda on core insolvency law—it is presumably part of attorneys' toolkit and does not need memorialization. Nevertheless, some of these memoranda may be useful. The (b) memorandum, for example, was a useful reference source during the MF Global insolvency.

The (b) (6) memorandum is the closest thing to an analysis of the new Dodd-Frank "Orderly Liquidation Authority" ("OLA.") Since OLA is a work in progress and many attorneys are aware of it, there is no need yet for extensive written analysis here. Many of the (b) (6) memoranda (below) contain useful exegeses of core insolvency law, although other sources such as *Colliers on Bankruptcy* may be more generally useful.

2. Avoidances

i. (b) ((b) (6) (b) (b) (6) "Avoidances in Insolvency" (#138384).........10/07/05
ii. (b) (6) & (b) (6) to (b (b) (6) & (b) (6) "Legal Risks of Extraordinary Payments" (#50506).........05/16/97
iii. (b) (6) & (b) ((b) (6) to (b) (6) & (b) (6) "Preferences" (#99014) 08/24/77
iv. (b) (6) to ((b) (6) "The law of preferences and fraudulent conveyances in New York" (#99015).........03/13/78

Avoidance liability is a particularly salient problem in emergency lending, especially fraudulent conveyance liability for lending involving more than one entity in an affiliated group. A substantial amount of the collateral taken in 2008-09 came from bank affiliates, so fraudulent conveyance risk was constantly salient. As a general matter, the (b) (6) memoranda are superior to these in-house memoranda, being more recent.

3. (b) (6) Memoranda

i. (b) (6) to Interested Parties, "Fraudulent Conveyance Exposure to Insiders Under New York and Delaware Law" (# 335409) 07/02/09
ii. (b) (6) to (b) (6) (b) (6) and (b) (6) "What constitutes "New Value" under 11 U.S.C. 547(c)(1) and (c)(4)?" (Draft) (#311466).........06/16/09
iii. (b) (6) to (b) (6) (b) (6) & (b) (6) "What constitutes a 'contemporaneous exchange' under 11 U.S.C. § 547(c)(1)?" (Draft) (#311467) 06/10/09
iv. (b) (6) (b) (6) & (b) (6) to (b) (6)

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(b) (6), "Defending Preference Actions: Hypothetical Chapter 7 and Ordinary Course of Business" (#311468) 05/27/09

v. (b) (6) to Interested Parties, "Equitable Subordination (Including 'Insider' Status)" (#311470) 03/25/09

vi. (b) (6) to Interested Parties, "Lender Liability" (#311471) 03/25/09

These memoranda are the product of junior associates at the (b) (6) firm. They were prepared in connection with the workout of AIG. Most of these memoranda address problems in preferences and the law of fraudulent conveyances. Some of these memoranda (*e.g.*, the (b) (6) memorandum) contain little more than a rehash of *Collier's*; others are detailed and useful explorations of specific legal questions.

E. International Issues

i. Anonymous, "Foreign Bank USD Liquidity" (#335561) 10/07

ii. (b) (6) (b) (b) (6) & (b) (6) "Notes on the Prospect of a creditors' standstill" (Draft) (#100594) 12/16/97

iii. (b) (6) (b) (6) (b) (6) (b) ((b) (6) "Foreign Bank Default—Response" (Draft) (#40829) 12/15/97

iv. (b) (6) to (b) (6) "Immunity of the BIS" (#100656) 03/14/97

v. Letter from (b) ((b) (6) to (b) (6) on Closing of Branches and Standby Letters of Credit (#99016) 01/09/97

vi. (b) (6) to ((b) (6) (b) (6) (b) (6) "Vulnerability of The Bank to suit because of assets abroad" (#99017) 10/27/92

This section was introduced in Version 3.1 of the Doomsday Book. Broadly speaking, this Bank has two kinds of international roles: a narrower banking role and a broader role concerning international debt crises. The international banking role is operationally similar in many ways to the domestic banking role, although it presents many unique legal issues. But in international crises, the Federal Reserve's operational role becomes far more complex than banking. Most of the memoranda in this section are drafts written during the Korean crisis of late 1997 and early 1998. (b) (b) (6) later sanitized some of the drafts in May 1998.

The letter to (b) (6) outlines a common issue in branch closings: long-lived liabilities booked in the United States, usually standby letters of credit. If the branch that issues such liabilities ceases to exist because it is closed, what happens to the obligation? The answer is legally uncertain. It may disappear completely; it may spring to the head office; or it may persist. This letter proposed a solution that private parties could incorporate in their agreements. In a June 1997 meeting, the Standby Practices Working Group declined to take up the suggestions in this letter, because the financial institutions that they represented would

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probably not accept the suggestions. Foreign branch standby letter of credit liabilities will therefore remain a problem in the case of a branch closing.

(b) (6) memorandum outlines an international operational problem: risk to this Bank from foreign attachments. The work behind this memorandum has been thoroughly updated using foreign counsel opinions ((b) (6) (b) (6) (b) (6) (The problem jurisdictions seem to include Japan, Hong Kong and Argentina.) This problem is also discussed in other memoranda, *e.g.*: (b) (6) to (b) (6) "Assets of non-New York branches as collateral" (Jan. 8, 1993); (b) (6) to (b) (6) "Sakura Bank—Proposal to pledge book-entry securities owned by head office at discount window" (Sept. 22, 1995); (b) ((b) (6) to (b) (6) "Discount Window Collateral—Foreign Situated and Foreign Booked (Jan. 10, 1997). These memoranda are not included in the Doomsday Book because the (b) memorandum adequately frames the problem, and these other memoranda deal with ordinary operational concerns of the Bank.

F. Regulatory and Enforcement Issues

i. (b) (6) & (b) (b) (6) to (b) (6)
"Governmental Authority to Close Financial Institutions" (#199023) 01/22/07
ii. Memorandum to (b) (6) from (b) (6) "The Legal Consequences of a Money Laundering Conviction for a Financial Institution" (#70162) 02/09/01
iii. Memorandum from Enforcement Workgroup to (b) (6) and (b) "Enforcement authority under Gramm-Leach-Bliley" (#59950) ...04/25/00
iv. Memorandum from (b) (6) and (b) (6) to (b) (6) "Impact of a Criminal Conviction on a State Member Bank" (#59623) 03/13/00
v. Memorandum from (b) (6) to (b) (6) and (b) (6) "Disqualification Provisions Triggered by Conviction of a Financial Institution" (#48854) 02/05/99

This section contains a number of memoranda on regulatory and enforcement issues. One memorandum discusses federal authority to close financial firms. Most of the others discuss the consequences of a *legal* crisis: usually the legal impact of a criminal conviction on the operations of a financial institution. This impact can be wide-ranging. Without mitigation (which is often available), a conviction can amount to a death sentence on many activities of a financial institution.

This section might be deleted in subsequent versions of the Doomsday Book. Generally, enforcement is not associated with financial crisis. Although Bankers Trust is precedent to the contrary, the crisis never came to fruition, and the legal regime was somewhat different back then. The only purely regulatory memorandum in this section has been supplanted, to a significant extent, by the Dodd-Frank legislation.

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G. Historical Collection of Primary Documents

i. (b) (6) (b) (6) and (b) (6) to Board of Governors, "Potential Request of the Federal Reserve Bank of New York to Commence Negotiations in Connection with the Proposed Refinancing of a Portion of the Loans Extended to the United Mexican States by the U.S. Treasury (#335556) 05/24/96
ii. Draft (b) (6) Memo on Cable Transfers (#278103) 07/20/89
iii. (b) (6) to ((b) (6) "Payment of interest on required reserves and reduction in reserve requirements" (#219614)....04/08/88
iv. (b) (6) to Legal Files, "Foreign exchange transactions for Federal Deposit Insurance Corporation (#211766) 11/04/87
v. (b) ((b) (6) & (b) (6) to (b) (6) "The Federal Reserve Bank of New York's ability to deal in forward foreign exchange transactions" (#312840) 11/21/87
vi. (b) (6) to (b) (6) "Authority of Federal Reserve Banks to Provide Liquidity Support to the BIS Through the Purchase of Gold" (#131810) (Draft)....01/10/83
vii. (b) (6) to (b) (6) "Authority of Federal Reserve Banks to Provide Liquidity Support to the BIS by Purchasing Gold" (#144417)....12/24/82
viii. (b) (6) to (b) (6) "Legal Authority of Federal Reserve to engage independently in foreign exchange transactions" (#212904) 09/14/81
ix. (b) (6) & (b) (6) to (b) (6) "Interest Bearing SDR Valued Deposits for the IMF" (#148825) 04/03/81
x. (b) ((b) (6) & (b) (6) to (b) (6) "Authority of Federal Reserve Banks to lend Government securities to dealers" (#98982) 01/29/80
xi. Legal Division ((b) (6) to Board of Governors, "Authority of Board to pay interest on required reserves of member banks" (#282372)....06/19/78
xii. (b) (6) & (b) (((b) (6) to (b) (6) Untitled [on gold transactions, specifically selling collateral on gold loans] (#131486)....03/18/76
xiii. "RND", "Authority for Foreign Exchange Operations by the Federal Reserve System" (Draft) (#212435)....08/28/75
xiv. (b) (6) "Direct Extension of Emergency Credit to a Nonmember Bank or Bank Holding Company on its Own Note" (#100588) 01/17/75
xv. (b) (6) to (b) (6) "Power of this Bank to pay interest on deposits of foreign central banks and foreign states" (draft) (# 280627) 10/29/74
xvi. (b) (6) to (b) (6) "Analysis of 31 U.S.C.A. Section 1023" (#144909)....06/30/69
xvii. ((b) (6) to Federal Open Market Committee, "Legal considerations regarding Federal Reserve participation in Treasury refunding operations (#336062)....06/12/68

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xviii. (b) (6) and (b) (6) Memoranda on Foreign Exchange Operations, in Hearings before the Committee on Banking and Currency, *Bretton Woods Agreement Act Amendments*, 87th Cong. 2d Sess. 157 (#337128).. 02/27-28/62
xix. (b) (6) to (b) (6) "Exchange of Treasury Bills by Federal Reserve Banks" (#225541) 03/26/47
xx. (b) (6) to (b) (6) Letter on Treasury Exchange Privilege (#283409)...01/22/37
xxi. Section 13(3) Historical Material (#200664) 1932-1988

Some of these documents were very important (or even controversial!) in their time, but now reflect well-established powers. (The 1962 (b) (6) memorandum is particularly significant.) Other of these documents may have been less important, but still may contain interesting legal arguments. Some of the powers opinions in other sections of the Doomsday Book will probably be relegated to this historical collection in future editions.

This collection of documents can be divided into several themes (with some overlaps):

- Fiscal agency (Treasury or others): iv, ix, xv, xvi
- Foreign exchange and swaps: i, ii, iv-viii, xiii, xviii
- Gold lending: vi, vii, xii
- Interest on deposits: iii, xi, xv
- Section 13(3): xiv, xxi
- Securities lending: x
- Treasury exchange: xvii, xix, xx

The Section 13(3) historical material (xxi) is all gathered in one PC Docs file, but contains a wealth of material. A list is here:

- Original 1932 Section 13(3) application
- August 1932 Circular #1134 discussing Section 13(3)
- 1936 Circular letter to Reserve Bank Presidents and Chairmen describing extension of and changes to Section 13(3) program.
- 1970 Board staff history of Section 13(3) (NB: it acknowledges conduit lending)
- June 3, 1970 Board staff memo by (b) (6) to (b) (6) discussing possibility of Section 13(3) lending to Penn Central. This memo interprets "endorsed or otherwise secured to the satisfaction of the Federal Reserve bank" to mean that "the Reserve Bank must expect that the borrower's obligation will be fully liquidated in due course (although not necessarily the stated maturity), either

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from sources available to the borrower *or* by recourse to indorsements or collateral security supporting its note." The italicized "or" (not in original) is very significant.

- July 10, 1970 FRBNY memo on Penn Central.
- July 27, 1970 FRBNY memo on Penn Central, contemplating conduit lending.
- December 1970 material on contingency planning for Section 13(3) and other emergency loans. Includes thoughts like conduit lending, and participating loans among Reserve Banks. This material seems to have been approved by the Board, or at least senior Board staff.
- June 1971 document on participating loans among Reserve Banks.
- March 1972 document on participating loans among Reserve Banks.
- Undated draft loan agreement.

The references to conduit lending and "endorsed or otherwise secured" are both very significant. The significance of conduit lending—back-to-back lending to one entity through another—was discussed above with the Section 13(3) opinions. In 2008, Board Staff had some problems construing the "endorsed or otherwise secured" language to permit unrestricted acquisition of assets under Section 13(3). Although this seems to have been obviated by the Dodd-Frank amendments to Section 13(3), it is worth knowing that Board staff had fewer problems with this language back in 1970.

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APPENDIX - Revision History

This appendix contains a history of revisions to the Doomsday Book from Version 3.0 (October 24, 1997) to present. There may be no record of earlier versions. The version decimal changes with each new edition of the Doomsday Book. The version integer number changes when there is a significant change in the Doomsday Book. Version 4.0 (May 13, 2004) accommodated Revised UCC Article 9, and the major changes it wrought to Reserve Bank collateral practice. Version 5.0 is a response to the events of 2008-09.

Version 4.1 (June 19, 2006, #151685) to 5.0

Deleted Legal Group Y2K Playbook Scenario Guidance Sheets:

Reason: These guidance sheets were prepared for the kind of skeleton legal department in place over the weekend of Friday, December 31, 1999-Monday, January 3, 2000. They anticipated a limited operational scenario (power, machine, and computer failures wrought by the Y2K programming glitches), and provided a detailed cookbook response to each sub-scenario (*e.g.*, "contact (b) (6) or (b) (6) neither of whom are with the Bank any more.) Since it was only a skeleton staff, the sheets also assumed that the matter would be handled by a lawyer unfamiliar with the task.

This has not typified any subsequent crisis, and is unlikely to typify any future crisis. The Legal Function has much more depth and expertise now than it did in 1999, and is likely to call for outside counsel, if required. Crises are very unlikely to fit prior templates.

- Accounting Scenario Guidance Sheet – "Effect payments to books even though Fedwire and/or the Integrated Accounting System are either closed or_inoperable?"
- ACH Scenario Guidance Sheet – "Any interruption of ACH capabilities"
- Automation Services Scenario Guidance Sheet – "Failure of critical hardware or software during the event."
- Bank Holiday Scenario Guidance Sheet – "Need to declare a bank holiday or effect of declaring a bank holiday on the ability of a bank to conduct its functions"
- Computer SWIFT and Foreign Central Bank Scenario Guidance Sheet – "The Bank is subject to a massive computer virus attack during the CDC.
- Contract Guidance 1 Scenario Guidance Sheet – "A need to quickly procure a good or service: (1) because of a product or service failure, or (2) in order to supplement an existing system."
- Discount Window Scenario (A) Guidance Sheet – "Depository institution ("DI") without Funds Account Requests a Discount Window Loan (Assumes OC 10 docs and collateral)"
- ELPICA Y2K Scenario Guidance Sheet – "Legal receives notice that a crime or

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other act raising supervisory issues is being or has been committed at an institution that the Fed supervises."

- Contracted Service Failure Scenario Guidance Sheet – "If there is a failure of a good or service for which the Bank has an existing contract in place."
- Fedwire YSK Scenario Guidance Sheet – "Fedwire unable to open at 12:30 a.m. on Monday, 1/3/2000."
- Fiscal Agency Scenario Guidance Sheet – "A fiscal principal fails to fund overdraft caused by payment of principal or interest on its book-entry securities."
- DI Lending Scenario Guidance Sheet – "Lending to Undercapitalized or Critically Undercapitalized DI."
- DI Scenario Guidance Sheet – "Depository institution ("DI") without Funds Account Requests a Discount Window Loan (Assumes OC 10 docs and collateral)"
- Overdrafts Scenario Guidance Sheet – "Collateralizing Overdrafts of Institution without Access to Discount Window."
- Emergency Lending Scenario Guidance Sheet – "Emergency Lending – All Assets Pledge"
- DTC Lending Scenario Guidance Sheet – "Lending to Depository Trust Company ("DTC")."

Deleted following memoranda:

- (b) (6) to (b) (6) & (b) (6), "Interest Rate on Credit Extensions to IPCs" (Draft) (January 27, 1999) (#100589)

Reason: The historical information in this memorandum ceased to be interesting in light of the fresh precedents set by the events of 2008-09.

- (b) (6) to (b) (6), "Y2K Emergency Lending to the Chicago Mercantile Exchange" (#52746) (September 21, 1999)
- (b) (6) to (b) (6), "Y2K Emergency Lending to the BOTCC" (#54260) (September 21, 1999)
- (b) (6) to (b) (6) and (b) (6) "CME, CBOT, and BOTCC Emergency Powers" (#54905) (September 7, 1999)

Reason: Because of the Dodd-Frank Act and the subsequent clarification of responsibilities, FRB-Chicago has responsibility for the Chicago-based financial markets utilities under new statutory authority. Furthermore, these documents discuss the rules of the clearing organizations in some detail, and are likely to be obsolete.

- (b) (6) & (b) (6) "Crisis Avoidance, Containment and Control: A Report From the Financial Services Front" (September 5, 2000)

Reason: This memorandum predated the World Trade Center crisis and the events of 2008-2009. These newer events radically altered the rules of the game for crisis

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management.

- (b) (6) to Legal Files, "Authority Under Section 10B of the Federal Reserve Act to make advances to The Depository Trust Company" (#98977) (October 8, 1997)

Reason: Although the conclusion of this memorandum remains good law, Section 806 of the Dodd-Frank Act contains a new statutory authority for lending to financial market utilities such as the DTC. It is very unlikely that FRBNY would prefer Section 10B authority to Section 806 authority.

- (b) ((b) (6) to (b) (6), "Lending to DTC—Taking Participants' Security Entitlements as Collateral Under the Code" (Draft) (#69216) (March 2, 2001)
- (b) ((b) (6) to (b) (6), "DTC – Power to Pledge Collateral" (#41561) (July 7, 1998)

Reason: These memoranda were wrong in neglecting a security interest perfected under UCC 9-309(10). Furthermore, as of the time of preparation of Version 5.0, FRBNY is in the process of drafting a lending agreement to DTC.

- (b) (((b) (6) & (b) (6) to (b) (6) "Legislative History of Federal Reserve discount authority under the third paragraph of Section 13 of the Federal Reserve Act" (#98960) (January 25, 1977)

Reason: The legislative history was only marginally useful (a recounting of a failed earlier attempt at legislation), and is pretty much irrelevant in light of Dodd-Frank and precedent events. Also, this memo construed the pre-1991 version of Section 13(3), so its main conclusion (a 90-day limit on lending tenor) was incorrect after 1991.

- (b) (6) to Legal Files, "All-Assets Agreement"(#100591) (July 10, 1990)
- Letter from (b) (6) to (b) (6) Esq. on all-assets security agreement (#99006) August 15, 1990

Reason: The bulk of the letter and the memo on which it was based, was concerned with the difficulties of perfection. These have gone away with the 2001 revision of UCC Article 9.

- (b) (((b) (6) to Legal Files, "Guarantees and Corporate Law" (#70165) (January 31, 2001)

Reason: The memo is legally trivial, and is not needed by any experienced attorney.

- (b) ((b) (6) to FBO Workgroup, "A Primer on the Liquidation of Collateral (#96106) (November 24, 2003)

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- (b) (6 (b) (6) to (b (b) (6) "Risks to a Secured Creditor of Being Oversecured" (#99012) (March 24, 1987)

Reason: The (b) (6) piece is drafted as a primer for clients, and does not contain any information that would be useful to an experienced attorney. In addition, if a Reserve Bank were to liquidate collateral, it would almost certainly be employing outside assistance. The (b) (6) piece discusses two issues: equitable subordination and lender liability. The latter legal doctrine is currently in desuetude; the former is very unlikely to bedevil a Reserve Bank.

- (b (b) (6) to Legal Files, "Whether a Temporary Perfected Security Interest Lapses Upon Filing of Bankruptcy Petition" (#47512) (December 10, 1998)

Reason: Since the 2001 revisions to UCC Article 9, the Reserve Banks have ceased to rely on temporary perfection on instruments, and instead perfect by filing.

- (b) ((b) (6) to (b) (6) "Considerations on Discount Window Lending to Non-Banks Under Section 13(3)" (#98978) (May 15, 1996)
- (b) (6) to (b) (6) "Survey of Consequences to FRBNY in the event of a counterparty's insolvency" (#99010) (May 9, 1996)
- (b) ((b) (6) & (b) (6) to (b (b) (6) "Assessment of DIP Financing Risks" (#98968) (November 13, 1991)

Reason: Since the events of 2008-09, these very basic memoranda have very little utility. Experienced FRBNY attorneys and outside counsel are very aware of the issues raised by these memoranda. Furthermore, much of the (b) (6) memorandum is no longer true, because of subsequent revisions to the Bankruptcy Code.

- (b) ((b) (6) untitled (on judgment creditor executing against foreign party account held indirectly with Federal Reserve Bank) (Draft) (#46174) (February 3, 1998)

Reason: The analysis of this memorandum has been superseded by the case law developed in foreign central bank attachment cases.

- (b) (b) (6) (b) (6) "Effect of New York Superintendent Taking Possession of a Foreign-Bank Branch" (Draft) (#100593) 12/17/97

Reason: This basic memorandum has very little utility.

- Document by (b) (6) and (b) (6) "Enforcement Actions Against Banks and Thrifts" (#84665) (January 1992)

Reason: This memorandum is ancient, and the subject-matter should be known to any supervisory or enforcement attorneys at FRBNY.

- (b) (6) & (b) (6) to (b (b) (6) *et al*, "Controlling Creditor Liability"

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(#51540) (October 31, 1996)

Reason: This memorandum has been superseded by subsequent legal developments that have muted the risk of lender liability. A more up-to-date treatment may be found in (b) (6) to Interested Parties, "Lender Liability" (March 25, 2009) (#311471), in the (b) (6) collection.

- Subcommittee on Discounts and Credits to Committee on Discounts and Credits, "Review of the Question of Whether Reserve Banks Should Lend Only to Solvent Institutions" (#98999) (August 22, 1977)

Reason: The policy concerns of this memorandum have been supplanted by statutory commands: both in Section 142 of FIRREA amending Section 10B and Title 11 of the Dodd-Frank Act, that amended Section 13(3). (For Section 142, see (b) (6) to (b) (6) "FDICIA Section 142 – Discount Window Operations" (April 17, 1992).)

Added following memoranda and documents:

- (b) (6) and (b) (6) to (b) (6) "Authority to Pay Interest to Primary Dealers on Cash Balances Held in Margin Accounts) (#336754) (November __, 2011)
- (b) (6) & (b) (6) "Federal Reserve Credit Initiatives During the First Year of the Meltdown: August 2007 to Mid-2008" (#336726) (October, 2011)
- (b) (6) to Legal Files, "Legislative Reenactment and Section 13(3)" (#335560) (October 26, 2011)
- (b) ((b) (6) to Legal Files, "Power to Transact with CLS Bank" (October 6, 2011) (#335736)
- (b) (b) (6) to Legal Files, "DFMU Lending Authority: Repo and FX Swap" (September 27, 2011) (#334866)
- (b) ((b) (6) to (b) (6) (b) (6) & (b) (6) "Analysis of the 'Chapter 14' SIFI Insolvency Proposal" (#333984) (September 13, 2011)
- (b) (b) (6) to Legal Files, "Does Dodd-Frank Section 806 Grant Takeout Lending Authority?" (August 5, 2011) (#333443)
- (b) ((b) (6) to Legal Files, "Applicability of Title 8 of Dodd-Frank to Foreign Financial Market Utilities" (#328979) (Draft) (March 25, 2011)
- (b) (6) & (b) (6) to (b) (6) "Primary Dealer Status of Salomon Brothers, Inc. 1991-1992 (# 325151) (October 4, 2010)
- (b) (6 (b) (6) to (b) (6) "The Fetishism of Physical Collateral" (June 3, 2010) (#320292)
- (b) (((b) (6) to Legal Files, "Field Warehouses: An obsolete legal concept" (Jan. 22, 2010) (#327234)
- (b) (6) "Financial Crisis Manual" (September, 2009) (#337857)

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- (b) (6) to Interested Parties, "Fraudulent Conveyance Exposure to Insiders Under New York and Delaware Law" (July 2, 2009) (# 335409)
- (b) (6) to (b) (6) (b) (6) and (b) (6) "What constitutes "New Value" under 11 U.S.C. 547(c)(1) and (c)(4)?" (Draft) (June 16, 2009) (#311466)
- (b) (6) to (b) (6) (b) (6) & (b) (6) "What constitutes a "contemporaneous exchange" under 11 U.S.C. § 547(c)(1)?" (Draft) (June 10, 2009) (#311467)
- (b) (6) (b) (6) & (b) (6) to (b) (6) "Defending Preference Actions: Hypothetical Chapter 7 and Ordinary Course of Business" (May 27, 2009) (#311468)
- (b) (6) to Interested Parties, "Equitable Subordination (Including 'Insider' Status)" (March 25, 2009) (#311470)
- (b) (6) to Interested Parties, "Lender Liability" (March 25, 2009) (#311471)
- (b) (6) to (b) ((b) (6) "Letter from Department of Education on Student Loan Securities and FRBNY Security Interests" (December 30, 2008) (#335843)
- (b) ((b) (6) to Legal Files, "AIG Loan Restructuring—Reserve Bank Powers" (Draft) (Oct. 21, 2008) (#286371)
- (b) (6) & (b) ((b) (6) to (b) (6) "Bank Authority to Issue a Guarantee" (July 25, 2008) (#281797)
- (b) ((b) (6) to (b) (6) "Equity Kickers and Reserve Bank Loans" (July 11, 2008) (#280304)
- (b) (6) & (b) (6) to (b) (6) & (b) (6) (b) (6) "Authority for the Federal Reserve to Purchase Fed Funds" (#280160) (Draft, June 6, 2008)
- (b (b) (6) to Legal Files, "Analysis of the Legal Authority for the Bear Stearns Transaction" (#265951) (April 16, 2008)
- (b) (6) (b) (6) & (b) ((b) (6) to Legal Files, "Power of Reserve Banks to Purchase Fed Funds" (#265221) (April 15, 2008)
- (b) (6) (b) (6) (b) (6) & (b) (6) to Board of Governors, "The authority of the Federal Reserve to provide an extension of credit in connection with the acquisition by JP Morgan Chase of Bear Stearns" (#281546) (April 2, 2008)
- (b) (6) (b) (6) (b) (6) & (b) (6) to Board of Governors, "The authority of the Federal Reserve to provide an extension of credit to Bear Stearns through JP Morgan Chase" (#281545) (April 2, 2008)
- (b) (6) (b) (6) (b) (6) & (b) (6) to Board of Governors, "The authority of the Federal Reserve to provide a primary dealer credit facility" (#281544) (April 2, 2008)

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- (b) (6) to Legal Files, "FRBNY Powers to Enter Into Nonrecourse Lending Transactions") (#264279) (March 14, 2008)
- (b) (6) (b) (6) (b) (6) (b) (6) to Board of Governors and the Federal Open Market Committee, "Authority to engage in securities lending activities with primary dealers" (#280373) (March 10, 2008)
- (b) (6) & (b) (6) to Legal Files, "Modification to Securities Lending Facility" (January 16, 2008) (#256004)
- (b) ((b) (6) to Legal Files, "Notes on Federal Reserve Banks' Incidental Lending Powers—Specifically Securities Lending" (December 24, 2007) (#232538)
- (b) (((b) (6) to Legal Files, "Section 13(3) Lending Authority to Foreign Central Banks" (September 10, 2007) (#229381)
- Anonymous, "Foreign Bank USD Liquidity" (#335561) (October, 2007)
- (b) ((b) (6) "Why a Reserve Bank Can Deal in Mortgage and Commercial Paper (#232316) (August 24, 2007)
- (b) (b) (6) to Legal Files, "Self-Help and Sovereign Immunity: There is no FSIA Immunity for Setoff and Nonjudicial Dispositions of Security Interests" (#221793) (August 7, 2007)
- (b) (b) (6) to (b) ((b) (6) "Non-recourse Lending Under Section 13(3) of the Federal Reserve Act" (# 221636) (July 30, 2007)
- (b) (6) & (b) (b) (6) to (b) (6) "Governmental Authority to Close Financial Institutions" (#199023) (January 22, 2007)
- (b) ((b) (6) to Legal Files, "Section 718 of the Financial Services Regulatory Relief Act of 2006 and the Discount Window" (#192061) (December 4, 2006)
- (b) (6) "Exchange of Maturing Securities" (#176746) (Draft) (June 20, 2006)
- (b and (b) (6) to (b) (6) "Providing Dollar Liquidity to Foreign Central Bank Customers" (#109977) (February 27, 2006)
- (b) (6) to Legal Files, "Authority of FRBNY to Engage in Repo Transactions with Foreign Currency Reserves" (#161058) (January 24, 2006)
- (b) (6) to Distribution List, "Statutory Analysis: Overnight Cash Balance at Foreign Euro Triparty Repo Custodian" (#131222) (September 9, 2005)
- (b) (6) to Distribution List, "Statutory Analysis: Overnight Cash Balance at Domestic Triparty Repo Custodian" (#121375) (September 9, 2005)
- (b to (b) (6) & (b) (6) "Federal Reserve Bank Powers to Provide Overdraft Capacity to Broker-Dealers" (#105961) (October 9, 2002)
- (b) (6) to (b) (6) "Authority of Reserve Banks to Issue Guarantees on Behalf of Depository Institutions" (# 232613) (August 27, 1999)
- (b) (6) to (b) (b) (6) "Options on Repurchase Agreements" (#283945) (August 10, 1999)

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- (b) (6) to (b) (6) "Ability of Reserve Banks to Lend to Foreign Central Banks" (#41959) (July 16, 1998)
- (b) (6) to (b) (6) "Foreign Securities Lending" (#297078) (January 29, 1997)
- (b) (6) (b) (6) and (b) (6) to Board of Governors, "Potential Request of the Federal Reserve Bank of New York to Commence Negotiations in Connection with the Proposed Refinancing of a Portion of the Loans Extended to the United Mexican States by the U.S. Treasury (#335556) (May 24, 1996)
- (b) ((b) (6) to Legal Files, "A Brief History of Repo Authority for Federal Reserve Banks (#283634) (May 23, 1996)
- (b) (6) to ((b) (6) "Cable transfers/foreign exchange and Section 14 of the Federal Reserve Act" (#204884) (January 30, 1991)
- "Annex to Operating Circular 10" (Non-recourse loan) (March 14, 2008) (#264266)
- (b) (6) to (b) (6) "REI/authority to acquire a firm under incidental powers" (September 26, 1990) (#75589)
- (b) (6) "Legal Basis for Foreign Currency Operations" (#278193) (Draft from Board Staff) (December 13, 1989)
- (b) ((b) (6) to (b) (6) "Legal Authority for Foreign Exchange Operations" (#211504) (December 7, 1989)
- (b) (6) to (b) (6) "Authority of the FDIC to Open Receivership Accounts at a Federal Reserve Bank," (#224718) (April 14, 1988)
- (b) (6) to ((b) (6) "Payment of interest on required reserves and reduction in reserve requirements" ($219614) (April 8, 1988)
- (b) (6) to Legal Files, "Foreign exchange transactions for Federal Deposit Insurance Corporation (#211766) (Nov. 4, 1987)
- (b) ((b) (6) & (b) (6) to (b) (6) "The Federal Reserve Bank of New York's ability to deal in forward foreign exchange transactions" (#312840) (July 21, 1987)
- (b) (6) to (b) (6) "Reimbursement from the Treasury for fiscal agency services" (#144576) (August 28, 1986)
- (b) (6) to (b) (6) "Authorization to invest foreign currency funds" (#212905) (March 3, 1986)
- (b) (6) to (b) (6) "Authority of Federal Reserve Banks to Provide Liquidity Support to the BIS Through the Purchase of Gold" (#131810) (Draft) (January 10, 1983)
- (b) (6) to (b) (6) "Authority of Federal Reserve Banks to Provide Liquidity
- FRBNY, "A Report on Drysdale and other Recent Problems of Firms Involved in the Government Securities Market" (#199042) (September 15, 1982)
- (b) (6) to (b) (6) "Authority of Treasury Department to Indemnify

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Bank" (#144522) (March 26, 1982)

- (b) (6) to (b) (6) "Legal Authority of Federal Reserve to engage independently in foreign exchange transactions" (#212904) (September 14, 1981)
- (b) (6) & (b) (6) to (b) (6) "Interest Bearing SDR Valued Deposits for the IMF" (#148825) (April 3, 1981)
- (b) (((b) (6) and (b) (6) to (b) (6) "Reimbursement to this Bank for fiscal agency activities performed at the direction of the Treasury" (#144421) (March 28, 1980)
- (b) (6) to (b) (6) "Legal Authority of Reserve Bank to Permit Reserve Account Overdrafts" (#105569) (January 15, 1980)
- Legal Division ((b) (6) to Board of Governors, "Authority of Board to pay interest on required reserves of member banks" (#282372) (June 19, 1978)
- (b) ((b) (6) & (b) (6) to (b) (6) "Gold Loans" (#189493) (April 19, 1976)
- (b) (6) & (b) ((b) (6) to (b) (6) Untitled [on gold transactions, specifically selling collateral on gold loans] (#131486) (March 18, 1976)
- "RND", "Authority for Foreign Exchange Operations by the Federal Reserve System" (Draft) (#212435) (August 28, 1975)
- (b) ((b) (6) & (b) (6) to (b) (6) "Government unlimited liability to a Federal Reserve Bank" (#125478) (June 13, 1975)
- (b) (6) to (b) (6) "Power of this Bank to pay interest on deposits of foreign central banks and foreign states" (draft) (# 280627) (October 29, 1974)
- Contingency Planning Staff Group to Board of Governors, "Emergency Use of the Discount Window" (July 13, 1970)
- Board of Governors, "Eligibility for Discount of Mortgage Company Notes, 56 Fed. Res. Bull 39 (1970)
- (b) (6) to (b) (6) "Analysis of 31 U.S.C.A. Section 1023" (#144909) (June 30, 1969)
- ((b) (6) to Federal Open Market Committee, "Legal considerations regarding Federal Reserve participation in Treasury refunding operations" (#336062) (June 12, 1968)
- (I (b) (6) to Federal Open Market Committee, "Legality of plan for lending Government securities by Federal Reserve Banks" (July 10, 1968) (#279410)
- (b) (6) (Draft), "Authority of Federal Reserve Banks to 'Lend' Government Securities" (May 6, 1968) (#279407)
- (b) (b) (6) and (b) (6) Memoranda on Foreign Exchange Operations, in Hearings before the Committee on Banking and Currency, *Bretton Woods Agreement Act Amendments*, 87th Cong. 2d Sess. 157 (#337128) (Feb. 27 & 28 1962)
- (b) (6) to (b) (6) "Exchange of Treasury Bills by Federal Reserve Banks" (#225541) (March 26, 1947)

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- (b) (6) to (b) (6) Letter on Treasury Exchange Privilege (#283409) (January 22, 1937)
- Section 13(3) Historical Material (#200664) 1932-1988

Deleted following agreements:

- Request for Section 13(3) Authority (#98738) (~March 1, 1999)
- Section 13(3) Resolution by Board of Governors (#98740) (January 28, 2004)
- Section 13(3) Resolution by Board of Directors (#98739) (May 19, 1997)
  Reason: Events of 2008 showed that such documentation was unnecessary. Section 13(3) authority was forthcoming without a formal process.
- Power of Attorney (#98730) (~March 15, 1999)
  Reason: This small snippet of language granting FRBNY power of attorney with respect to collateral seemed unnecessary, as it is in OC-10.

Added following agreements:

- Compilation of Board of Governors financial crisis actions under Section 13(3), 13(13), and 23A/B of the Federal Reserve Act, the BHC Act, the FDI Act, Regulation D, and other provisions of law (#324528) (September 9, 2010)
- Maiden Lane Package (Folder # 280745) (October 1, 2010)
- Maiden Lane II Package (Folder #313296) (January 21, 2010)
- Maiden Lane III Package (Folder # 313298) (December 23, 2010)
- AIG Lending Agreement Package (Folder # 284970) (January 19, 2011)
- AMLF Package
- CPFF Package (Folder #286269) (October 20, 2008)
- ILFC Package (Folder #311433) (July 9, 2010)
- MMIFF Package (Folder #299155) (November 3, 2009)
- TALF Package (Folder # 294399) (Currently still being updated)
- TSLF Package (Folder #326309) (______ __, 20__).
- Foreign Central Bank Swaps (#297093) (April 19, 2009)
- Annex to Operating Circular 10 (Non-recourse loan) (#264266) March 14, 2008
- US/Canadian Dollar Swap Agreement (#77255) (September 14, 2001)

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Version 4.0 (May 10, 2004 #67823) to 4.1

Deleted following memorandum:

- Bankruptcy Court's Opinion in *Beogradska* case

Reason: The opinion was reversed by a published district court opinion (313 B.R. 561 (S.D.N.Y. 2004), which was in turn reversed by Congress in the 2005 bankruptcy amendments.

Added following memoranda and documents:

- (b) to (b) (6) "Avoidances in Insolvency" (#138384) (October 7, 2005)
- "Managing Financial Crisis: A Primer" (#146701) (Fall, 2005) (Principal author: (b)
- FRBNY Authorizing Resolution for the Inter-District, Discount Window Backup Relationship (undated, unexecuted) (Legal_Markets # 2246)
- FRBNY Draft Operational Incapacity Statement (Legal_Markets #2249)
- FRB-SF Authorizing Resolution for the Inter-District, Discount Window Backup (February 28, 2002) (Legal_Markets # 2247)
- Letters from FRBNY to DTC authorizing Buddy Banks (August 16 & 14, 2002) (Legal_Markets #2250)

Deleted following agreements:

- Stone-Age Clearing Agreement (#98724)

  Reason: Physical securities are rare, and no longer play any role in financial markets.

Added following agreements:

- (b) ((b) (6) "Draft Nonrecourse Loan Agreement" (June, 2006) (#175344)
- (b) (6) "Credit Considerations, Emergency Lending Agreement" (Legal Markets #4250) (undated; viewed as part of Section 13(3) lending documentation)
- Dollar Pound Swap Agreement (9/14/01; prepared in connection with 9/11/01 operational disruption) (#77254)
- (b) (6) "Medium-Term Exchange Stabilization Agreement" (February, 1995) (#169004)
- (b) (6) Revised OC-10 (~June, 2006) (#138729)

NOTE: The documentation "Emergency Purchase of Securities from Foreign Central Bank" was not in version 4.0, even though it was listed as being there. The documentation appears to be a sanitized version of some simple instructions written from a foreign central bank with respect to its securities pool. This document, which was in the Y2K Playbook, contains too little lawyering to be of any value to the Doomsday Book. I have therefore

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omitted any references to this documentation in version 4.1.

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Version 3.3 (October 27, 2000, # 51188) to 4.0

Deleted following memoranda:

- (b) (6) & (b) (6) to (b) (6) "Contingency planning re: Federal Reserve Credit for Chrysler Financial Corporation" (Draft) (August 17, 1979)

Reason: This memorandum was primarily concerned with problems of lending under old Section 13(3) of the Federal Reserve Act. It contained a straightforward discussion of filing against chattel paper, and a few words about *pari passu* negative pledge arrangements of which FRBNY had become aware. A discussion of the law of negative pledge arrangements can be found in (b) ((b) (6) to (b) (6) "On Lending to a Debtor who Has Previously Executed a Negative Pledge Agreement with a Creditor" (March 25, 1999).

- (b) (6) to ((b) (6) "Field Warehousing as a device to perfect a security interest in 'instruments'" (#99007) (December 31, 1974)

Reason: Field warehousing is still probably permissible under Revised Article 9 (see R9-313), but it remains risky as ever. Revised Article 9, unlike original Article 9, permits a security interest in notes by filing. Like original Article 9, it also permits a short term unfiled nonpossessory security interest for new value. Given these alternatives, there seems to be no reason why a Reserve Bank would ever want to use a risky field warehouse arrangement. Since the case law on field warehousing has probably evolved in the last thirty years, there seemed to be no reason to retain this ancient memorandum. Memoranda were added to version 5.0 on the problems with field warehousing specifically, and physical delivery of collateral in general.

Added following memoranda:

- (b) ((b) (6) to FBO Workgroup, "A Primer on the Liquidation of Collateral" (#96106) (November 24, 2003)
- (b) (6) (CMTF Workgroup), "Evaluation of Excess Treasury Collateral Procedures (#97576) (November 21, 2003)
- (b) (6) to (b) (6) & (b) (6) "Federal Reserve Bank Powers to Provide Overdraft Capacity to Broker-Dealers (October 9, 2002)
- (b) (6) "Chronology of Events at the Federal Reserve Bank of New York After the World Trade Center Attack" (November 20, 2001)
- (b) ((b) (6) to Legal Files, Draft "Special Deposits" (July 25, 2001)
- (b) ((b) (6) to (b) (6) "Lending to DTC—Taking Participants' Security Entitlements as Collateral Under Code" (Draft) (March 2, 2001)
- (b) (6) to (b) (6) "The Legal Consequences of a Money Laundering Conviction for a Financial Institution" (February 9, 2001)
- (b) (((b) (6) to Legal Files, "Guarantees and Corporate Law" (January 31, 2001)

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- (b) (6 (b) (6) to Legal Files, "Section 14(b)(1) Municipal Securities" (September 1, 2000)
- Enforcement Workgroup to (b) (6) and (b) (6) "Enforcement authority under Gramm-Leach-Bliley" (April 25, 2000)
- (b) (6) & (b) (6) "Legislative History of the Provisions of the Federal Reserve Act Relating to the Discount Window and Open Market Operations" (March 21, 2000)
- (b) (6) and (b) (6) to (b) (6) "Impact of a Criminal Conviction on a State Member Bank" (March 13, 2000)
- (b) (6) to (b) (6) "Will a 'Tested Fax Arrangement' be deemed a 'Commercially Reasonable Security Procedure' under UCC Article 4A?" (November 12, 1999)
- (b) (6) to (b) (b) (6) "Domestic Tri-Party Repo," (August 10, 1999)
- (b) (6) to (b) (6) and (b) (6) "Disqualification Provisions Triggered by Conviction of a Financial Institution" (February 5, 1999)
- 63 Federal Register 65693, "Federal Home Loan Bank Standby Letters of Credit (12 C.F.R. §§ 938, 943 (November 30, 1998)
- (b) (6) & (b) (6) "Enforcement Actions Against Banks and Thrifts" (January, 1992)
- (b) (((b) (6) & (b) (6) to (b (b) (6) "Assessment of DIP Financing Risks" (Nov. 11, 1991) (removed from V 3.2 and restored here)
- (b) (6) to (b) (6) "Section 2(a) of the Gold Reserve Act of 1934" (February 4, 1983)

Transferred Following Memorandum from "Powers Memoranda" to "Powers Opinions"

- 63 Federal Register 65693, "Federal Home Loan Bank Standby Letters of Credit (12 C.F.R. §§ 938, 943) (November 30, 1998)
  Reason: This regulation is legally binding, at least on Federal Home Loan Banks.

Deleted following agreements

- (b) ((b) (6) Section 13(3) Lending Agreement
  Reason: Superseded by Section 13(3) Long-Form and Short-Form Agreements
- (b) ((b) (6) Back-to-Back Lending Agreement

Reason: The back-to-back lending agreement (PC Docs #98719) was designed as an alternative to Section 13(3) lending, using only Section 10B authority (which includes the power to make non-recourse loans). Before 2002, an alternative to Section 13(3) lending seemed necessary because Section 13(3) lending required consent of at least five governors. This consent might not have been physically possible during some contingency situations. Since the 2001 revisions to Section 11 of the Federal Reserve Act, Board consent now seems physically possible in almost all cases. Another reason for not retaining the back-to-back

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agreement was that it would need substantial revision to be workable. The current draft of the agreement relies on an event of default to title the collateral to FRBNY; this is probably unacceptable because of the cross-default clauses most banks are subject to. The problem could be fixed if Section 10B permits an explicit put option for collateral, which is the economic equivalent of nonrecourse collateralized lending.

- (b) (6) UCC-1 Financing Statement

  Reason: Current UCC-1 financing statement is broader, and comports with Revised UCC Article 9. There is no reason to have a financing statement limited to intangibles.

Added following agreements

- Electronic Texts of Operating Circulars
- (b) (6) Federal Home Loan Bank Pledge Agreement (#97918)
- (b) (6) Securities Control Agreement—Entire Account (#77171)
- (b) (6) Securities Control Agreement—Specified Securities (#77225)
- (b) (6) Deposit Account Control Agreement (#86686) (July 15, 2002)
- (b) (6) Section 13(3) Long-Form Agreement (#80703) (January 2, 2002)
- (b) (6) to (b) (6) "Explanation of Form of 13(3) Credit and Security Agreement (January 2, 2002) (#80706) (treated as agreement)
- (b) (6) Section 13(3) Short-Form Agreement (#77694) (October 17, 2001)
- (b) (6) Plaintiff's Memorandum of Law in Support of its Motion for Preliminary Relief (CHIPS Attachment Litigation) (February 6, 2001 Draft)
- FDIC Indemnity Agreement (September 7, 2000)
- Foreign Exchange Committee, Y2K: Best Practice in the Foreign Exchange Market (October 18, 1999)
- Fiscal Agent Letter of Indemnity (December 1, 1997)
- Granville Gold Trust Papers
  - Memorandum to (b) (6) *et al.* from (b) (6) & (b) (6) "FRBNY v. Granville Gold Trust—Temporary Injunction" (January 12, 1995)
  - Order to Show Cause (January 3, 1995)
  - Memorandum of Law in Support of Order to Show Cause (January 3, 1995)

Eliminated distribution list

Reasons: First, the Doomsday Book went from paper to primarily electronic distribution. Second, there seemed to be no particular demand for the Doomsday Book outside of Legal.

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Version 3.2 (April 14, 1999, # 42549) to 3.3:

Revised following agreements:

- Section 13(3) Account Agreement
- Back-to-back lending agreement

Deleted following agreement:

- 4/22/92 ETP Back-to-back lending agreement
  Reason: This agreement was supplanted by the May 16, 2000 JHS version.

Deleted following memorandum:

- (b) (6) (b) (6) to Legal Files, "Interpretive Authority—Reserve Bank Fiscal Agency Powers" (Draft) (May 16, 1997)
  Reason: Found (and added) a far better memorandum on same topic in legal files: (b) (6) & (b) (6) to (b) (6) "Federal Reserve Bank Powers to Provide Nonbank Dealers with Government Securities Clearance Services" (May 4, 1995)

Added following memoranda:

- (b) (6) to (b) (6) "Requirements to Lift an Automatic Stay in an Insolvency Proceeding" (December 24, 1999)
- (b) (6) to (b) (6) "Y2K Emergency Lending to the Chicago Mercantile Exchange" (September 21, 1999)
- (b) (6) to (b) (6) "Y2K Emergency Lending to the BOTCC" (September 21, 1999)
- (b) (6) to (b) (6) & (b) (6) "CME, CBOT, and BOTCC Emergency Powers" (September 7, 1999)
- (b) (6) (b) (6) to (b) (b) (6) "Risk Analysis of Section 13(3) Lending" (August 10, 1999)
- (b) (b) & (b (b) (6) to (b) (6) "Minimum Documentation Recommendation for Emergency Lending to DIs" (May 7, 1999)
- (b) (6) to (b) (6) (b) (6) (b) (6) (b) (6) & (b) (6) "December 31, 1999 Holiday Project: Summary of Relevant Holiday Laws" (October 9, 1997)
- (b) (6) (b) ((b) (6) & (b) (6) to (b) (6) "Mutual Funds Internal & External Borrowing Capacity" (September 27, 1996)
- (b) (6) to (b) (6) "Authority of Reserve Banks to borrow funds denominated by a foreign currency" (May 24, 1996)
- (b) (6) & (b) (6) to (b) (6) "Federal Reserve Bank Powers to Provide Nonbank Dealers with Government Securities Clearance Services" (May 4, 1995)

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Added following name to distribution list: (b) (6)
Deleted following names from distribution list: (b) (6) (b) (b) (6) (b) (6)

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Version 3.1 (July 13, 1998, # 40709) to 3.2:

Converted WordPerfect 6.1 versions of agreements to Microsoft Word. Renamed files (which had previously been in DOS format) to take advantage of Windows naming flexibility.

Added following memoranda:

- (b) ((b) (6) to (b) (6) "On Lending to a Debtor who Has Previously Executed a Negative Pledge Agreement with a Creditor" (March 25, 1999)
- (b) (6) "Direct Extension of Emergency Credit to a Nonmember Bank or Bank Holding Company on its Own Note" (Jan. 17, 1975)
- (b) ((b) (6) and (b) (6) . to (b) (6) "Section 13(3) Lending Authority Disclosure Requirements" (March 10, 1999)
- (b) (6) . to (b) (6) "All-Assets Pledge Risk Assessment" (March 4, 1999)
- (b) (6) to (b) (6) & (b) (6) "Interest Rate on Credit Extensions to IPCs" (Draft, January 29, 1999)
- (b) (b) (6) to Legal Files, "On 'Conduit Lending' by a Federal Reserve Bank Through Another Bank" (January 6, 1999)
- (t (b) (6) to Legal Files, "Whether a Temporary Perfected Security Interest Lapses Upon Filing of Bankruptcy Petition" (December 10, 1998)
- (b) (b) to (b) (6) "FCM Bankruptcy Regime" (December 7, 1998)
- (b) ((b) (6) to (b) (6) "DTC – Power to Pledge Collateral" (July 8, 1998)
- (b) (6) and (b) (6) to (b) (6) (b) (6) & (b) (6) "Options Regarding Closure of Edge Corporation" (July 28, 1994)
- (b) (6) to (b) (6) "FDICIA Section 142 – Discount Window Operations" (April 17, 1992)
- (b) (((b) (6) & (b) (6) to (b) (6) "Authority of Federal Reserve Banks to lend Government securities to dealers" (January 29, 1980)

Deleted following memoranda.

- (b) ((b) (6) & (b) (6) to (b) (6) "Reserve Bank extension of credit to a troubled Edge corporation--Allied Bank International" (March 3, 1983)

Reason: This checklist style document contained little in the way of legal analysis, and is operationally obsolete after the 1991 amendments to Section 13(3).

- (b) (6) to (b) (6) "Reserve Bank's Power to Accept Deposits From Branches and Agencies of Foreign Banks" (Dec. 18, 1995)

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Reason: This memorandum largely duplicated a contemporaneous memorandum from (b) (6) to (b) (6), "Foreign bank branch and agency discount window access" (Jan. 2, 1996). The (b) (6) memorandum had a somewhat greater scope, so was retained.

- (b) (6) to (b) (6) "Required Documents and Procedures for a 13(3) Loan" (April 1, 1994)

  Reason: This checklist-style memorandum referred to the Section 13(3) documentation in versions 3.0 and 3.1 of the Doomsday Book. This documentation has been amended in version 3.2.
- (b) (((b) (6) & (b) (6) to (b (b) (6) "Assessment of DIP Financing Risks" (Nov. 11, 1991)

  Reason: The editor did not see lending to a bankrupt nonbank as a plausible use of Federal Reserve facilities. The legal issues are not abstruse, and in the unlikely event that such a lending situation emerges, a Discount Window attorney should be able to replicate the advice in this memorandum "off the cuff."

Added following agreements:

- Section 13(3) Lending Agreement
- Section 13(3) Account Agreement
- Intangible Collateral Agreement
- Filing Statement for Intangible Collateral Agreement
- Power of Attorney
- Model Parent Guaranty
- OC-10 Letter of Agreement to Secure Guaranty
- Model Subsidiary Guarantee
- User's Guide to Guarantees

Deleted following agreements:

- Section 13(3) Lending Agreement (DISCOUNT.NEW)

  Reason: This old lending agreement was supplanted by a new version.
- All Assets Security Agreement (ASSIGN2.ASS)

  Reason: A separate security agreement is no longer needed, in light of Revised OC-10.
- All Securities Security Agreement (ASSIGN2.SEC)

  Reason: A separate security agreement is no longer needed, in light of Revised OC-10. Furthermore, this agreement was drafted before revision of UCC Article 8, governing security interests in securities.

Reorganization:

- Moved Memorandum from (b) (6 (b) (6) & (b) (6) to (b) (6)

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"Legislative History of Federal Reserve discount authority under the third paragraph of Section 13 of the Federal Reserve Act" (Jan. 25, 1977) from Section I-A to Section II-D.

Added following names to distribution list: (b)
Deleted following names from distribution list: (b) (6)

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Version 3.0 (October 24, 1997) to 3.1:

Added following memoranda:

- (b) ((b) (6) to Legal Files, "Is the Power to Establish an Account Incidental to Section 13(3) Lending Authority?" (May 15, 1998)
- (b) ((b) (6) untitled (on judgment creditor executing against foreign party account held indirectly with Federal Reserve Bank) (Draft) (Feb. 3, 1998)
- (b) (b) (6) (b) (6) "Effect of New York Superintendent Taking Possession of a Foreign-Bank Branch" (Draft) (Dec. 17, 1997)
- (b) (6) (b) (b) (6) & (b) (6) "Notes on the Prospect of a creditors' standstill" (Draft) (Dec. 16, 1997)
- (b) (6) (b) (6) (b) (6) (b) ((b) (6) "Foreign Bank Default—Response" (Draft) (Dec. 15, 1997)
- (b) (6) and (b (b) (6) to (b) (6) and (b) (6) "Review of the Proposal to Offer the Single-Account Structure to Foreign Banks" (Jan. 30, 1997)
- (b) (6) to Legal Files, "Authority Under Section 10B of the Federal Reserve Act to make advances to The Depository Trust Company" (Oct. 8, 1997)
- (b) (6) & (b) (6) to (b (b) (6) *et al*, "Controlling Creditor Liability" (Oct. 31, 1996)
- (b) ((b) (6) to (b) (6) "The Authority of Investment Companies and the SIPC to Borrow and to Pledge Assets" (June 24, 1996)
- (b) (6) to ((b) (6) (b) (6) (b) (6) "Vulnerability of the Bank to suit because of assets abroad" (Oct. 27, 1992)
- (b) (6) to (b) (6) "Mutual Insurance Company's ability to pledge its assets to secure a loan" (Mar. 4, 1991)
- (b) (6 (b) (6) to (b (b) (6) "Risks to a Secured Creditor of Being Oversecured" (Mar. 24, 1987)

Deleted no memoranda.

Neither added nor deleted any agreements, but replaced draft OC10 with printed version.

Added following names to distribution list: (b) (6) (b) (b) (6)
Deleted following names from distribution list: (b) (b) (6) (b) (6)

Reorganization (all in Volume II):

- Moved (b) ((b) (6) to Legal Files, "Interpretive Authority—Reserve Bank Fiscal Agency Powers" (Draft) (May 15, 1997) from Section I-B to III-C.
- Abolished old Section III-C ("Branch Closings") and moved its contents (Letter from (b) ((b) (6) to (b) (6) on Closing of Branches and Standby Letters of Credit (Jan. 9, 1997)), along with new memos, to a new Section V ("International").

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PC Docs Access Information: #280627

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