

DEPARTMENT OF THE TREASURY**Fiscal Service****31 CFR Parts 356 and 370****Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Regulations Governing Payments by the Automated Clearing House Method on Account of United States Securities**

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") is issuing in final form an amendment to 31 CFR Part 370 (Regulations Governing Payments by the Automated Clearing House Method on Account of United States Securities) to permit purchasers of United States securities, where authorized by the appropriate offering circular, to pay for their securities by means of a debit entry to their deposit account by the Automated Clearing House (ACH) method. The amendment will offer investors an additional means of payment for the purchase of their securities.

Also, this final rule amends 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). The amendment will authorize bidders in Treasury security auctions to make payment for awarded Treasury securities by approved electronic means.

EFFECTIVE DATE: October 22, 1996. For purchasers of securities to be held in the TREASURY DIRECT system, debit ACH will be implemented with a phased-in approach.

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SUPPLEMENTARY INFORMATION:**I. Background**

The title of Part 370 is being changed to Regulations Governing the Transfer of Funds by Electronic Means on Account of United States Securities, to indicate that the part is intended to provide regulatory coverage for various methods of payment by electronic means. It is anticipated that the ACH method will, in the future, be one of several electronic payment mechanisms for United States securities. Subparts have

been added to part 370 to separate the already-existing credit ACH regulations, governing payments from the Department to the owner of the security, from the debit ACH regulations, which will govern the payment to the Department by the owner for the settlement amount of the security. The debit ACH regulations provide an additional payment method, that of a debit entry to the owner's deposit account, using the ACH method, if authorized by the appropriate offering circular. The TREASURY DIRECT system will offer debit ACH as an additional method of payment for the purchase of marketable Treasury securities, as authorized in the offering circular at 31 CFR Part 356. An authorization signed by the investor for the debit transaction will be required. The debit ACH payment option is only available for TREASURY DIRECT accounts established at least two weeks prior to the scheduled debit ACH entry.

Although investors may continue to pay for the purchase of their securities by non-electronic means, the additional method of payment will benefit investors by permitting them the use of their money until the debit entry takes place on the settlement date of the Treasury securities.

31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department to the public of marketable Treasury bills, notes, and bonds. The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.¹

The Department believes that the future expansion of payment methods for securities in Treasury auctions to accommodate payment through electronic means will be beneficial to investors in Treasury securities and will enhance the efficiency of the Treasury securities market. Accordingly, § 356.17 of the uniform offering circular has been amended to allow payment for marketable Treasury securities to be made by those electronic means approved by the Department (see 31 CFR Part 370). Also, § 356.25 has been amended to provide that, where payment is made by authorized electronic means, such payment will be made on the issue date of the Treasury security by charging the settlement amount to the account specified by the

¹The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). Amendments to the circular were published on June 3, 1994 (59 FR 28773), March 15, 1995 (60 FR 13906), July 16, 1996 (61 FR 37007) and August 23, 1996 (61 FR 43626).

bidder or the submitter on behalf of the bidder.

Debit ACH is one such means of electronic payment that the Department is approving as an option for bidders whose awarded securities will be held in TREASURY DIRECT. To utilize the debit ACH payment option for securities to be held in TREASURY DIRECT, a bidder, or a submitter on behalf of a bidder, will be required to meet the necessary conditions, and to complete any required authorizations, as described in part 370.

Conforming changes are being made to § 356.17 to allow for the possibility of various means of electronic payment in the future by bidders whose awarded securities are held in the commercial book-entry system.²

II. Section by Section Summary**31 CFR Part 356**

(1.) Section 356.17 has been amended by adding new paragraphs (a)(2) and (b)(2) to add payment by authorized electronic means as a payment option available to bidders in Treasury security auctions. If the awarded securities are to be held in TREASURY DIRECT, the bidder must meet certain conditions, and complete any required authorizations, as provided in 31 CFR part 370. Conforming changes are also made to paragraphs (a) and (b), and the newly redesignated paragraphs (a)(3) and (b)(3) of this section.

(2.) Section 356.25 has been amended by adding a new paragraph (b) which provides that when the method of payment is by authorized electronic means, the settlement amount will be charged to the specified account on the issue date of the particular Treasury bill, note or bond. Conforming changes are also made to paragraph (a) and the newly redesignated paragraph (c) of this section.

31 CFR Part 370

(1.) The title of this part has been changed from Regulations Governing Payments by the Automated Clearing House Method on Account of United States Securities, to Regulations Governing the Transfer of Funds by Electronic Means on Account of United States Securities. This change will permit the part to be used in the future for methods of payment for United States securities by other electronic means in addition to the ACH method.

(2.) Section 370.0 has been amended to indicate that the regulations in this

²When the final rule (61 FR 43626) becomes effective, the commercial book-entry system will be known as the Treasury/Reserve Automated Debt Entry System (TRADES).

part apply to the electronic transfer of funds where employed by the Bureau of the Public Debt (Public Debt) in connection with United States securities, except where otherwise provided. Previously, the section indicated that the part applies to the ACH method of payment where employed by Public Debt in connection with United States securities. The amendment indicates the potential for the future expansion of the part should Public Debt choose to use other electronic means in connection with United States securities.

(3.) Subparts have been added to separate the credit and debit ACH sections. Subpart A contains general information which will apply to the entire part.

(4.) Section 370.1 has been amended to redefine several terms used in the section and to add appropriate definitions. The definition of deposit account has been expanded from the account maintained at a financial institution specified by a recipient into which ACH payments under this part are to be made, to the account into which either payments or debit entries under this part are to be made.

Entry has been defined as an order or request for the deposit of money to the deposit account of an owner (a credit entry) or for the payment of money from the deposit account of an owner (a debit entry).

A definition of payment has been added to clarify that where used in this part, payment means the transfer of funds from the Department to the deposit account of the owner. A definition of settlement date has been added.

(5.) Subpart B has been added to the regulations to indicate that this subpart contains provisions applicable to payments under the ACH method, and applies to payments from the Department on account of United States securities. Sections have been renumbered to fit the new structure of the part, and to provide space for the addition of future sections, if necessary.

(6.) Former § 370.2 through and including § 370.11 have been renumbered as § 370.5 through § 370.14.

(7.) The title of former § 370.12, Other payments, has been changed to indicate that this section refers to other payments by the ACH method, and renumbered as § 370.15.

(8.) The former § 370.13, Waiver of regulations, has been moved to subpart D, and will be renumbered as § 370.30.

(9.) The former § 370.14, Liability of Department and Federal Reserve Banks, has been renumbered as § 370.16.

(10.) Subpart C has been added to provide a structure to contain the regulations covering debit entries by the ACH method.

(11.) Section 370.20, Designation of a financial institution to receive debit ACH entries, provides that an owner of a security shall designate the financial institution and the deposit account within that institution which will receive the debit ACH entries. For securities that will be held in the TREASURY DIRECT system, the designation will be made using the ACH information provided in the TREASURY DIRECT tender for the direct deposit of payments for that account. In the TREASURY DIRECT system, the purchaser must receive the debit entries in the same deposit account which has been designated to receive payments of principal and interest from the TREASURY DIRECT system by credit entries. This means that the purchaser may not designate one account to receive payments by the ACH method and another account to pay for securities, but must use the same account for both transactions. The TREASURY DIRECT account must have been established at least two weeks prior to the scheduled debit ACH entry. Written authorization for the debit must be provided by the purchaser.

(12.) Section 370.21, Agreement of the financial institution, provides that the acceptance and handling by a financial institution of a debit entry constitutes its agreement to this subpart.

(13.) Section 370.22, Prenotification, provides the procedures for prenotification messages for debit ACH, if a prenotification message is sent.

(14.) Section 370.23, Responsibility of financial institution, sets forth the responsibilities of the financial institution designated to receive a debit entry.

(15.) Section 370.24, Handling of debit entries by Federal Reserve Banks, provides that the Federal Reserve Banks, as the fiscal agents of the United States, shall initiate a debit to the owner's account in accordance with the instructions of the owner.

(16.) Section 370.25, Liability of Department and Federal Reserve Banks, provides that the Department, which includes the Capital Area Servicing Center, and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information furnished by the owner as to the debit entry.

(17.) Subpart D has been added to accommodate those provisions which apply equally to all subparts contained in this part.

(18.) Section 370.30, Waiver of regulations, is the former § 370.13, which has been moved and renumbered.

(19.) The former § 370.15 Supplements, amendments or revisions, has been redesignated § 370.31. The phrase payments made by ACH has been changed to the transfer of funds by electronic means.

Procedural Requirements

It has been determined that this final rule does not meet the criteria for a "significant regulatory action," as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This rule relates to matters of public contract and procedures for U.S. securities. Accordingly, pursuant to 5 U.S.C. 553(a)(2), the notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no new collections of information contained in this Final Rule, and, therefore, the Paperwork Reduction Act (44 U.S.C. 3504(h)) does not apply.

List of Subjects in 31 CFR Parts 356 and 370

Bonds, Federal Reserve System, Government securities, Securities, Electronic funds transfer.

Dated: October 8, 1996.
Gerald Murphy,
Fiscal Assistant Secretary.

For the reasons set out in the preamble, 31 CFR parts 356 and 370 are amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.17 is amended by revising the introductory text of paragraphs (a) and (b), redesignating paragraphs (a)(2) and (b)(2) as paragraphs (a)(3) and (b)(3), adding new paragraphs (a)(2) and (b)(2), and revising redesignated paragraph (a)(3) and the introductory text of paragraph (b)(3) to read as follows:

§ 356.17 Responsibility for payment.

* * * * *
 (a) *TREASURY DIRECT*. For securities to be held in *TREASURY DIRECT*, payment of the par amount and announced accrued interest, if any, must be submitted with the tender unless other provisions have been made, such as payment by an authorized electronic means providing for immediately available funds or payment by charge to the funds account of a depository institution.
 * * * * *

(2) Payment by authorized electronic means. Payment may be made by electronic means approved by the Department, provided the bidder, or the submitter on behalf of the bidder, has met the necessary conditions and has satisfactorily completed any required authorizations for such means of payment, in accordance with 31 CFR part 370.

(3) Authorized charge to a funds account. If a depository institution or dealer submits a tender for a *TREASURY DIRECT* bidder and payment is not submitted with the tender or made by an authorized electronic means, an authorization from a depository institution to charge the institution's funds account at a Federal Reserve Bank must be on file with the Bank to which the tender was submitted.

(b) Commercial book-entry system. For securities to be held in the commercial book-entry system, payment of the par amount and announced accrued interest, if any, must be submitted with the tender unless other provisions have been made, such as by payment by an authorized electronic means providing for immediately available funds or by charge to the funds account of a depository institution.
 * * * * *

(2) Payment by authorized electronic means. Payment may be made by electronic means approved by the Department, provided the bidder, or the submitter on behalf of the bidder, has met the necessary conditions, and has satisfactorily completed any required authorizations, for such means of payment.

(3) Authorized charge to a funds account. Where payment is not submitted with the tender or made by an authorized electronic means, an authorization to charge the funds account of a depository institution must be provided as follows.
 * * * * *

3. Section 356.25 is amended by redesignating paragraph (b) as paragraph (c), adding a new paragraph (b), and

revising the introductory text of paragraphs (a) and (c), to read as follows:

§ 356.25 Payment for awarded securities.

* * * * *
 (a) Payment with tender. When payment is made with the tender as provided for in § 356.17 (a)(1) and (b)(1), settlement is accomplished as follows:
 * * * * *

(b) Payment by authorized electronic means. Where the method of payment is by an authorized electronic means as provided for in § 356.17 (a)(2) or (b)(2), the settlement amount will be charged to the specified account on the issue date.

(c) Payment by authorized charge to a funds account. Where the submitter's method of payment is an authorized charge to the funds account of a depository institution as provided for in §§ 356.17 (a)(3) or (b)(3), the settlement amount will be charged to the specified funds account on the issue date.
 * * * * *

PART 370—REGULATIONS GOVERNING THE TRANSFER OF FUNDS BY ELECTRONIC MEANS ON ACCOUNT OF UNITED STATES SECURITIES

1. The authority citation for part 370 continues to read as follows:

Authority: 31 U.S.C. Chapter 31.

2. The heading of Part 370 is revised to read as set forth above.

3. Section 370.0 is revised to read as follows:

§ 370.0 Applicability.

The regulations in this part apply to the transfer of funds by electronic means where employed by the Bureau of the Public Debt in connection with United States securities, except as otherwise provided.

4. Sections 370.1 through 370.4 are designated as Subpart A and a heading for subpart A is added to read as follows:

Subpart A—General Information

5. Section 370.1 is amended by revising the definitions for deposit account, financial institution, and owner, and adding definitions for entry, payment, and settlement date to read as follows:

§ 370.1 Definitions.

* * * * *
Deposit account means the account maintained at a financial institution specified by a recipient into which ACH credit or debit entries under this part are to be made.

Entry means an order or request for the deposit of money to the deposit account of an owner (a credit entry) or for the payment of money from the deposit account of an owner (a debit entry).

Financial institution means, for purposes of this part, an institution which processes the transfer of funds by authorized electronic means.

Owner means the individual(s) or entity in whose name(s) a security is registered and who is authorized under the appropriate subparts of this title to request that the security be transferred, reissued, reinvested, exchanged or paid.

Payment means, for the purpose of this part, the deposit of money from the Department to the deposit account of the owner.
 * * * * *

Settlement Date means the date an exchange of funds with respect to an entry is reflected on the books of the Federal Reserve Bank(s). The settlement date will in most cases be the same as the issue date of a security held in the *TREASURY DIRECT* system.
 * * * * *

§§ 370.13 and 370.15 [Redesignated]

6. Sections 370.13 and 370.15 are redesignated as §§ 370.30 and 370.31.

§§ 370.2–370.12 and 370.14 [Redesignated]

7. Section 370.14 is redesignated as section 370.16; sections 370.2 through 370.12 are redesignated as sections 370.5 through 370.15 respectively.

8. The heading of the newly redesignated section 370.15 is revised as set forth below:

§ 370.15 Other payments by the ACH method.

* * * * *
 9. Newly redesignated sections 370.5 through 370.16 are designated as Subpart B and a heading for subpart B is added to read as follows:

Subpart B—Credit ACH Entries

10. Subpart C is added to read as follows:

Subpart C—Debit ACH Entries

- Sec.
 370.20 Designation of a financial institution to receive debit ACH entries.
 370.21 Agreement of the financial institution.
 370.22 Prenotification.
 370.23 Responsibility of financial institution.
 370.24 Handling of debit entries by Federal Reserve Banks.
 370.25 Liability of Department and Federal Reserve Banks.

§ 370.20 Designation of a financial institution to receive debit ACH entries.

The purchaser of a security shall designate a financial institution to receive debit ACH entries and shall identify the deposit account to which the debit entries are to be received, by written authorization, or by an authorization similarly authenticated by the purchaser, in a manner approved by the Department. The purchaser of a security to be held in TREASURY DIRECT must receive debit ACH entries in the same deposit account designated to receive TREASURY DIRECT payments by the ACH method. Such TREASURY DIRECT account must have been established at least two weeks prior to the scheduled debit ACH entry and must be an account which is capable of receiving debit entries. The authorization of the purchaser shall not be recurring, that is, it shall be effective for one debit transaction only.

§ 370.21 Agreement of the financial institution.

A financial institution's acceptance and handling of a debit entry made with respect to a security covered by this subpart shall constitute its agreement to the provisions of this subpart.

§ 370.22 Prenotification.

(a) General. The Department may send a prenotification message to the financial institution designated to receive debit ACH entries to confirm the accuracy of the account information furnished by an owner, or other person or entity entitled to make the designation, and to advise the financial institution that such account has been so designated. Prenotification messages may be sent at any time prior to the first debit ACH entry. The prenotification message shall contain the ABA routing/transit number of the financial institution designated to receive the debit entry, as well as a depositor name reference, deposit account number, and

type or classification of account at such institution.

(b) Response to prenotification. The financial institution must respond to the prenotification message within eight calendar days after the date of receipt, if the information as to the account number and/or the type of account contained in the message does not agree with the records of the financial institution, or if the financial institution for any other reason has questions about the forthcoming debit entry, including its ability to debit the account in accordance with this subpart. Upon receipt of a response to the prenotification message, the Department or the Federal Reserve Bank, as appropriate, will correct the debit instructions and send another prenotification message, or contact the owner for further instructions.

(c) Effect of failure to reject. If a financial institution does not reject or otherwise respond to a prenotification message within the specified time period, the financial institution shall be deemed to have accepted the prenotification and to have warranted to the Department or the Federal Reserve Bank that the information as to the deposit account number and/or the type of account contained in the message is accurate as of the time of such prenotification.

§ 370.23 Responsibility of financial institution.

A financial institution which receives a debit entry on behalf of its customer must:

(a) Debit the customer's account on the settlement date. If the financial institution is unable to debit the designated account, it shall return the entry by no later than the next business day after receipt, with an electronic message or other response explaining the reason for the return.

(b) Promptly notify the appropriate Federal Reserve Bank or the Capital

Area Servicing Center when the designated account has been closed, or when it is on notice of the death or legal incapacity (as determined under applicable State law) of any individual named on such account, or when it is on notice of the dissolution of a corporation in whose name the deposit account is held.

§ 370.24 Handling of debit entries by Federal Reserve Banks.

Each Federal Reserve Bank, as fiscal agent of the United States, shall initiate the debit entry in accordance with the information furnished by the owner.

§ 370.25 Liability of Department and Federal Reserve Banks.

The Department and the Federal Reserve Banks will rely on the information provided by the owner, or other person or entity entitled to make the designation, concerning the financial institution or deposit account designated to receive the debit entry, and are not required to verify this information. The Department and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information so furnished.

11. Newly redesignated section 370.31 is revised to read as follows:

§ 370.31 Supplements, amendments or revisions.

The Secretary may, at any time, prescribe additional supplemental, amendatory or revised regulations with respect to the transfer of funds by electronic means.

12. Newly redesignated sections 370.30 and 370.31 are designated as Subpart D and a heading for Subpart D is added to read as follows:

Subpart D—Additional Provisions

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