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## Rule 10b-16 and the Regulation of Margin Accounts

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## RULE 10b-16 AND THE REGULATION OF MARGIN ACCOUNTS

The prolific use of credit in American society extends to the purchase of securities. Many investors use margin accounts to buy securities.<sup>1</sup> In a margin account transaction, the buyer pays a fraction of the purchase price, receiving credit from a broker or dealer for the unpaid balance.<sup>2</sup>

In 1969, the Securities and Exchange Commission (the "SEC") promulgated rule 10b-16 in an effort to regulate the use of credit in margin account transactions.<sup>3</sup> Congress specifically directed the SEC to propose a rule regulating the use of credit in securities transactions that would parallel the coverage of the Truth in Lending Act ("TILA").<sup>4</sup> The SEC promulgated rule 10b-16 pursuant to its authority under section 10(b) of the Securities Act of 1934.<sup>5</sup> Rule 10b-16 requires broker-dealers<sup>6</sup> to disclose information about credit charges before extending

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1. See T. HAZEN, *THE LAW OF SECURITIES REGULATION* 285 (1985).

2. See L. LOSS, *FUNDAMENTALS OF SECURITIES REGULATION* 93 (Supp. 1985). The broker or dealer often uses the customer's securities as collateral for bank loans to finance the balance of the purchase price. *Id.* A margin purchase gives the buyer leverage, thus increasing the risk and potential gain from the investment.

3. 17 C.F.R. § 240.10b-16 (1985). Rule 10b-16 provides as follows:

(a) It shall be unlawful for any broker or dealer to extend credit, directly or indirectly, to any customer in connection with any securities transaction unless such broker or dealer has established procedures to assure that each customer

(1) Is given or sent at the time of opening the account, a written statement or statements disclosing (i) the conditions under which an interest charge will be imposed; (ii) the annual rate or rates of interest that can be imposed; (iii) the methods of computing interest; (iv) if rates of interest are subject to change without prior notice, the specific conditions under which they can be changed; (v) the method of determining the debt balance or balances on which interest is to be charged and whether credit is to be given for credit balances in cash accounts; (vi) what other charges resulting from the extension of credit, if any, will be made and under what conditions; and (vii) the nature of any interest or lien retained by the broker or dealer in the security or other property held as collateral and the conditions under which additional collateral can be required. . . .

(2) Is given or sent a written statement or statements, at least quarterly, for each account in which credit was extended, disclosing (i) the balance at the beginning of the period . . . (ii) the total interest charged for the period . . . (iii) all other charges resulting from the extension of credit in that account . . .

(b) It shall be unlawful for any broker or dealer to make any changes in the terms and conditions under which credit charges will be made (as described in the initial statement under paragraph (a) of this section), unless the customer shall have been given not less than thirty (30) days written notice of such changes. . . .

4. 15 U.S.C. §§ 1601-1681 (1982). See *infra* note 12 and accompanying text.

5. 15 U.S.C. § 78j(b) (1982), § 10(b), Securities Exchange Act of 1934.

6. 15 U.S.C. § 78c(4) (1982), § 3(a)(4), Securities Exchange Act of 1934 (the "Act") defines a "broker" as "any person engaged in the business of effecting transactions in securities for the ac-

credit for securities purchases. The Rule seeks to provide investors with adequate information about the terms and conditions of credit charges before opening a margin account.<sup>7</sup> In addition, rule 10b-16 requires subsequent periodic disclosure to inform the investor of the actual costs associated with the margin account.<sup>8</sup>

Rule 10b-16 had an inauspicious debut. For nearly a decade, rule 10b-16 was rarely used. In recent years, however, rule 10b-16 has appeared with increasing frequency in securities litigation.

The growing popularity of rule 10b-16 has engendered considerable controversy among the courts over the proper interpretation of the rule. Courts disagree about the availability of a private cause of action under rule 10b-16, and, if available, whether plaintiffs must prove scienter to succeed. Moreover, courts disagree about whether section 10(b) of the Securities Act or TILA should guide their interpretation of rule 10b-16.

Part I of this Note advocates the use of TILA as the interpretive guide for rule 10b-16. Part II considers the propriety of implying a private cause of action for rule 10b-16. Finally, part III concludes that a cause of action for rule 10b-16 should not require proof of scienter.

## I. THE PROPER RELATIONSHIP BETWEEN RULE 10B-16 AND TILA

### A. *The Genesis of Rule 10b-16*

Congress enacted the Truth in Lending Act<sup>9</sup> in 1968 to promote the informed use of credit by consumers. TILA requires accurate and timely disclosure by lenders of the terms and costs of credit to provide consumers with the opportunity to shop for favorable credit terms.<sup>10</sup>

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count of others, but does not include a bank." Section 3(a)(5) of the Act defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account . . . but not as part of a regular business." Rule 10b-16 requires disclosure by both brokers and dealers.

7. 17 C.F.R. § 240.10b-16(a)(1).

8. *See id.* § 240.10b-16(a)(2).

9. Pub. L. No. 90-321, 82 Stat. 146 (1968) (codified as amended at 15 U.S.C. §§ 1601 *et seq.* (1981)). The preamble to TILA declares that:

It is the purpose of this title [15 U.S.C. §§ 1601 *et seq.*] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

*Id.* at § 1601(a).

10. *See* S. REP. NO. 392, 90th Cong., 1st Sess. 1 (1967); *see also* H.R. REP. NO. 1040, 90th Cong., 1st Sess. (1967), *reprinted in* 1968 U.S. CODE CONG. & AD. NEWS 1965.

Congress specifically exempted securities transactions from TILA's coverage.<sup>11</sup> Instead, Congress directed the SEC to promulgate as soon as possible a rule requiring disclosure substantially similar to TILA for stockbroker margin loans.<sup>12</sup> The SEC responded to this "mandate" by promulgating rule 10b-16 pursuant to its authority under section 10(b) of the 1934 Act.<sup>13</sup>

### *B. The Judicial Response to Rule 10b-16*

In considering the proper interpretation of rule 10b-16, the courts have variously relied on the policies and legislative history underlying TILA and section 10(b) of the 1934 Act. As a result, courts have reached divergent results on issues arising under rule 10b-16.

Several courts have relied principally upon section 10(b) to discern congressional intent with respect to rule 10b-16.<sup>14</sup> These courts conclude that because the SEC promulgated rule 10b-16 pursuant to statutory authority granted in section 10(b), congressional intent with respect to section 10(b) must govern the interpretation of rule 10b-16.<sup>15</sup> Courts and commentators typically base their reliance on section 10(b) as rule 10b-16's interpretive guide on three assumptions. First, they assume statutory authority for a rule must govern its interpretation.<sup>16</sup> Second, they assume that Congress, in directing the SEC to regulate the disclosure of margin account credit terms, expected that judicial construction of rule 10b-16 would parallel that of section 10(b).<sup>17</sup> Finally, they assume that

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11. See *Hearings on S.5 Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. (1967).

12. The Senate Report added: "In recommending an exemption for stockbroker margin loans in the bill, the Committee intends for the SEC to require substantially similar disclosure by regulation as soon as it is possible to issue such regulation." SENATE REPORT, *supra* note 10, at 9; accord HOUSE REPORT, *supra* note 10.

13. See Secs. Exch. Act Release No. 34-8773 (Dec. 15, 1969).

14. See, e.g., *Angelastro v. Prudential-Bache Secs., Inc.*, 764 F.2d 939, 948 (3d Cir. 1985); *Slomiak v. Bear Stearns & Co.*, 597 F. Supp. 676, 680 (S.D.N.Y. 1984) (congressional intent should not be extrapolated from an unrelated statute [TILA]); *Abeles v. Oppenheimer & Co.*, 597 F. Supp. 532, 536 (N.D. Ill. 1983) (congressional intent of TILA should not be examined because rule 10b-16 is not within that Act).

15. See, e.g., *Abeles v. Oppenheimer & Co.*, 597 F. Supp. 532, 536 (N.D. Ill. 1983).

16. See *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 535 (9th Cir. 1984) ("the underlying statute" controlled evaluation of a rule adopted thereunder).

17. See *Slomiak v. Bear Stearns & Co.*, 597 F. Supp. 676, 681 (S.D.N.Y. 1984). The Senate Report noted only that the Securities Exchange Act of 1934 authorized the SEC to require disclosure of credit costs; no reference is made therein to § 10(b) or any other enabling statute. See SENATE REPORT, *supra* note 10.

rule 10b-16, unlike TILA, operates for the benefit of wealthy and financially sophisticated investors who are without the need for the extensive protection afforded by TILA.<sup>18</sup>

A number of weaknesses inhere in these proffered rationales. First, the SEC did not promulgate rule 10b-16 in a vacuum. Courts should consider reasonably available information in determining how best to interpret the rule. Second, no legislative history indicates that Congress intended or expected the SEC to promulgate rule 10b-16 under section 10(b) or that courts should construe the rule in accordance with section 10(b). In addition, section 10(b) and rule 10b-16 accomplish their disclosure objectives in different ways. Section 10(b) is a broad, "catch-all" antifraud provision whereas rule 10b-16 is a narrowly-tailored rule requiring disclosures. The vast difference between rule 10b-16's scope and required disclosure and that of section 10(b) undermines the contention that courts should interpret the rule coterminously. Finally, the cases reveal that margin investors as a class do need extensive protection comparable to that provided by the TILA.<sup>19</sup> Moreover, the Supreme Court expressly rejected the notion that the federal securities laws do not protect sophisticated and unsophisticated investors equally.<sup>20</sup>

Alternatively, a number of courts rely on TILA and its legislative history as the appropriate interpretive guide for rule 10b-16.<sup>21</sup> These courts rely on the following rationales for support. First, the statutory authority under section 10(b) for the promulgation of rule 10b-16 is unrelated to the reason for the rule's promulgation. The SEC promulgated rule 10b-16 because Congress desired disclosure of credit terms in securities transactions that would be substantially similar to the disclosure required by the TILA in other types of credit transactions.<sup>22</sup> Although section 10(b) of the 1934 Act *empowered* the SEC to promulgate the rule, Con-

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18. See Note, *SEC Rule 10b-16 and the Regulation of Margin Credit*, 87 YALE L.J. 372, 376-77 (1977) ("Rule 10b-16 is aimed at relatively wealthy and financially sophisticated individuals. . .").

19. See, e.g., *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530 (9th Cir. 1984) (\$36,714 downpayment made on margin account); *Slomiak v. Bear Stearns & Co.*, 597 F. Supp. 676 (S.D.N.Y. 1984) (securities with face value of several million dollars purchased on margin with cash downpayment of approximately ten percent of face value); see also *Jablon v. Dean Witter & Co.*, 614 F.2d 677 (9th Cir. 1980); *Nick v. Shearson/American Express, Inc.*, 612 F. Supp. 15 (D. Minn. 1984) (plaintiff margin investor unsophisticated).

20. See *Landreth Timber Co. v. Landreth*, 105 S. Ct. 2297 (1985) (rejecting the so-called "sale-of-business" doctrine).

21. See, e.g., *Haynes v. Anderson & Strudwick, Inc.*, 508 F. Supp. 1303, 1320 (E.D. Va. 1981); *Liang v. Dean Witter & Co.*, 540 F.2d 1107, 1111 (D.C. Cir. 1976).

22. See *supra* note 12.

gress intended the rule to fill a gap that it intentionally left in TILA.<sup>23</sup> Rule 10b-16, like TILA, is a mechanism for ensuring adequate disclosure for the benefit of credit consumers.<sup>24</sup>

Second, the close proximity between Congress' enactment of TILA and the SEC's promulgation of rule 10b-16 evidences the common origins of the two provisions. Indeed, Congress directed the SEC to promulgate a rule consistent with TILA "as soon as possible."<sup>25</sup>

Third, rule 10b-16 and TILA require similar disclosure. A margin investor will "shop around" for the most favorable credit terms just like a consumer of other types of credit. The information each would find useful is similar, and accordingly rule 10b-16 and TILA require the lender to provide similar information.<sup>26</sup>

Finally, and most significantly, in a release announcing the adoption of rule 10b-16, the SEC expressed its intent to conform the standard margin credit agreement to TILA's purpose of ensuring meaningful disclosure for the protection of credit consumers.<sup>27</sup> The SEC's unequivocal position is that courts should interpret rule 10b-16 in accordance with TILA.<sup>28</sup> The SEC's interpretation of its own rule is entitled to considerable deference.<sup>29</sup>

## II. IMPLYING A PRIVATE CAUSE OF ACTION UNDER RULE 10B-16?

Rule 10b-16, unlike TILA, does not contain an express private cause of action for injured margin credit consumers. Courts must therefore consider the propriety of implying a private cause of action under rule

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23. *Id.*

24. *See* Laing v. Dean Witter & Co., 540 F.2d 1107, 1113 (D.C. Cir. 1976). In addition, Congress already addressed the regulation of margin accounts generally in § 7 of the Securities Exchange Act of 1934.

25. *See supra* note 12.

26. TILA requires initial disclosure of the terms and conditions of credit charges, and periodic disclosure of credit transactions, outstanding balances, and deadlines for payments. 15 U.S.C. § 1637(a), (b) (1981). *Compare* rule 10b-16, *supra* note 3.

27. Secs. Exch. Act Release No. 34-8773 (Dec. 15, 1969).

28. *See id.*; *see also* SEC No-Action Letter to Erroll Thielecke (Jan. 17, 1985) (rule 10b-16 is a consumer protection measure); SEC No-Action Letter to L.W. Bankston (May 24, 1981) (rule 10b-16 enables customers to shop around among brokers for the best credit terms); SEC No Action Letter to Robert Wyman (July 13, 1977) (rule 10b-16 applies truth-in-lending protection to securities transactions).

29. *See* DuPont v. Collins, 432 U.S. 46, 54 (1977) (courts must consider the SEC's interpretation of a statute); *see also* Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969) (the construction of a statute by those charged with its execution is entitled to deference).

10b-16.<sup>30</sup> In *Touche Ross & Co. v. Redington*,<sup>31</sup> the Supreme Court declared that a congressional intent to create a private cause of action must exist as the basis of an implied cause of action.

Nearly every court to consider the issue has implied a private cause of action for a violation of rule 10b-16.<sup>32</sup> To a large extent, it makes little difference whether a court relies for guidance on TILA or on section 10(b) because both statutes suggest that appropriateness of an implied cause of action under rule 10b-16. In *Robertson v. Dean Witter Reynolds, Inc.*,<sup>33</sup> for example, the United States Court of Appeals for the Ninth Circuit implied a cause of action under rule 10b-16, relying primarily on the legislative history of section 10(b) of the 1934 Act. The court noted first that it is well-established that a private cause of action is implied under section 10(b).<sup>34</sup> Since rule 10b-16 was reasonably related to the antifraud goals of section 10(b), the rule's enabling statute, the court implied a cause of action under rule 10b-16.<sup>35</sup> To hold otherwise, the court

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30. The Supreme Court first implied a private right of action into a statute in *Texas & Pac. Ry v. Rigsby*, 241 U.S. 33 (1916). In *Rigsby*, the Court held that when violation of a statute results in damage to "one of the class for whose especial benefit the statute was enacted, the right to recover damages from the party in default is implied. . . ." *Id.* at 39. Thereafter the Court was reluctant to imply private causes of action until the decision in *J.I. Case v. Borak*, 377 U.S. 426 (1964). In *Borak*, the Court implied a private cause of action under § 14(a) of the Securities Exchange Act of 1934 and rule 14a-9 promulgated pursuant to § 14(a). The Court looked to the purpose of the statute and found a private action necessary to effectuate the statute's purpose of protecting investors through regulation of proxy statements. *Id.* at 432-33.

Lower courts relied extensively on *Borak* to imply private causes of action. In *Cort v. Ash*, 422 U.S. 66 (1975), however, the Supreme Court adopted a restrictive four-factor test for determining whether to imply private rights of action. The four factors included: (1) whether the plaintiff is "one of the class for whose *especial* benefit the statute was enacted;" (2) whether the legislative history evidences any intent to create an implied action; (3) whether an implied action would be consistent with the underlying purpose of the legislative scheme; and (4) whether the cause of action is one traditionally within the realm of state law so it would be inappropriate to imply a federal cause of action. *Id.* at 78.

The Court apparently abandoned this test in *Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979), declaring the determinative inquiry to be whether Congress intended to create the private right of action. *Id.* at 568.

31. 442 U.S. 560, 568 (1979).

32. *See, e.g.,* *Angelastro v. Prudential-Bache Secs., Inc.*, 764 F.2d 939 (3d Cir. 1985). *But see* *Furer v. Paine, Webber, Jackson & Curtis, Inc.*, [1981-82 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 98,701 (C.D. Cal. Apr. 20, 1982) (legislative history is ambiguous; therefore no implied private cause of action), *overruled*, 749 F.2d 530 (9th Cir. 1984).

33. 749 F.2d 530 (9th Cir. 1984).

34. *Id.* at 535; *see also* *Superintendent of Ins. v. Bankers Life & Casualty Co.*, 404 U.S. 6, 13 n.9 (1971) ("It is now established that a private right of action is implied under § 10(b)").

35. 749 F.2d at 539. The court decided to look to the Congress that enacted the Securities Exchange Act in 1934, rather than the 1968 Congress that enacted TILA, to evaluate congressional

concluded, would frustrate the policies underlying section 10(b).<sup>36</sup>

In *Haynes v. Anderson & Strudwick, Inc.*,<sup>37</sup> on the other hand, the District Court for the Eastern District of Virginia emphasized that rule 10b-16 is the securities law analogue to TILA. Accordingly, congressional intent underlying TILA, rather than section 10(b), should govern the interpretation of rule 10b-16.<sup>38</sup> Since Congress provided an express cause of action under TILA for victims of consumer credit disclosure violations, the court concluded, Congress must have intended a private cause of action to exist under the rule eventually promulgated, pursuant to its mandate, by the SEC.<sup>39</sup>

The Supreme Court has repeatedly indicated that a court must restrict its inquiry into the availability of an implied cause of action to congressional intent.<sup>40</sup> An examination of the congressional intent under rule 10b-16 suggests the appropriateness of implying a private cause of action. First, as the court in *Haynes* recognized, congressional intent for rule 10b-16 derives from TILA.<sup>41</sup> Since Congress provided a private cause of action for TILA violations, Congress must also have intended to provide a private cause of action for rule 10b-16 violations.<sup>42</sup> Analogous protection requires equal access to legal remedies.<sup>43</sup>

Potential liability will likely promote compliance by broker-dealers with the disclosure requirements of rule 10b-16.<sup>44</sup> A private cause of action for violations of 10b-16 will therefore supplement the SEC's enforcement of the rule.<sup>45</sup>

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intent with respect to a private action under rule 10b-16. *Id.* at 535. The court found rule 10b-16 reasonably related to the purposes of § 10(b), and thus concluded that a private action should be implied for the rule. *Id.* at 537-39.

36. *Id.* at 537.

37. 508 F. Supp. 1303, 1320 (E.D. Va. 1981).

38. *Id.*

39. *Id.*

40. *See supra* note 30.

41. *See supra* notes 21-29 and accompanying text.

42. The SEC filed an amicus curiae brief in *Angelastro v. Prudential-Bache Secs., Inc.*, 764 F.2d 939 (3rd Cir. 1985), in which it argued that since TILA provides a private cause of action, a private cause of action under rule 10b-16 was necessary to fulfill the congressional goals underlying the legislation. *See* 16 SEC. REG. & L. REP. (BNA) 1924-25 (Dec. 7, 1984). The SEC further asserted that at the time the enactment of TILA "the contemporary legal context" supported an implied right of action under rule 10b-16. *See id.*

43. *See supra* note 12 and accompanying text.

44. *See Angelastro v. Prudential-Bache Secs., Inc.*, 764 F.2d 939 (3rd Cir. 1985). The *Angelastro* court stated that private rule 10b-16 actions would protect investors from improper disclosures and "encourage brokerage firms to adhere to the rule's prescriptions." *Id.* at 950.

45. *See Note, supra* note 18, at 385-87. Factors limiting the effectiveness of SEC injunctive



### III. PROOF OF SCIENTER IS UNNECESSARY IN RULE 10B-16 ACTION

Perhaps the most important issue surrounding rule 10b-16 is whether a plaintiff must establish proof of scienter.<sup>46</sup> Resolution of the scienter issue depends largely on whether the courts rely on TILA or section 10(b) as the interpretive guide for rule 10b-16.<sup>47</sup>

At first glance the Supreme Court's decision in *Ernst & Ernst v. Hochfelder*<sup>48</sup> may appear to foreclose the scienter issue under rule 10b-16. In *Hochfelder*, the Court found that the statutory language of section 10(b) evidenced a clear congressional intent to proscribe intentional conduct.<sup>49</sup> Moreover, the Court held that the language of section 10(b) limited the scope of rule 10b-5, promulgated under section 10(b).<sup>50</sup> Accordingly, a rule 10b-5 claimant must prove that the defendant acted with scienter.<sup>51</sup> Similarly, the Ninth Circuit in *Robertson* relied on *Hochfelder* and section 10(b) in concluding that a rule 10b-16 cause of action requires proof of scienter.<sup>52</sup>

In *Haynes v. Anderson & Strudwick, Inc.*,<sup>53</sup> the court reached the opposite result by interpreting rule 10b-16 as coterminous with TILA. Scienter, the court reasoned, is irrelevant to the adequacy of credit information supplied by lenders, and therefore is unnecessary for a private rule 10b-16 action.<sup>54</sup>

Courts should refrain from imposing a requirement of proof of scienter in a rule 10b-16 action. The purpose of rule 10b-16 is to achieve TILA's

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relief include inadequate manpower to detect all violations and the presence of judicially imposed restrictions on SEC suits. *Id.*

An alternative to SEC injunctive relief is a private suit under rule 10b-5. An action under rule 10b-5, however, requires proof that the defendant acted with scienter, a formidable burden in the context of a rule 10b-16 violation. *See infra* notes 46-58 and accompanying text (arguing that scienter is not required to sustain a rule 10b-16 cause of action). Two courts have held that a rule 10b-5 action is available for rule 10b-16 violations. *See Angelastro v. Prudential-Bache Secs., Inc.*, 764 F.2d 939, 944 (3rd Cir. 1985); *Steinberg v. Sherson Hayden Stone, Inc.*, 546 F. Supp. 699, 700 (D. Del. 1982) (rule 10b-16 claim does not preclude a rule 10b-5 claim).

46. Scienter is the "intent to deceive, manipulate, or defraud." *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

47. *See supra* notes 14-29.

48. 425 U.S. 185 (1976).

49. *Id.* at 197-99.

50. *Id.* at 213-14.

51. *Id.*

52. *Robertson*, 749 F.2d at 540; *see also Grantville Mkt. Letter, Inc. v. Oppenheimer & Co.*, 610 F. Supp. 922 (S.D. Fla. 1985) (scienter required in a rule 10b-16 action).

53. 508 F. Supp. 1303, 1321 (E.D. Va. 1981).

54. *Id.* at 1321.

goal of adequate disclosure of credit terms and costs.<sup>55</sup> TILA does not impose a scienter requirement on its express cause of action.<sup>56</sup> Indeed, such a requirement would interfere with the comprehensive protection provided by the Act.<sup>57</sup> Moreover, since the proper interpretive guide for rule 10b-16 is TILA,<sup>58</sup> not section 10(b), the Supreme Court's reasoning in *Hochfelder* should not apply to rule 10b-16. Accordingly, courts are free to dispose of a scienter requirement under rule 10b-16.

Section 10(b) and rule 10b-5 are broad antifraud provisions. Concerned by the prospect of a deluge of rule 10b-5 actions, the Supreme Court in *Hochfelder* found it necessary to restrict the scope of section 10(b), and therefore rule 10b-5, by imposing a scienter requirement. On the other hand, rule 10b-16 requires specific and limited disclosure. Noncompliance with the disclosure requirements of rule 10b-16 is readily ascertainable by reference to objective criteria unrelated to the mental state of the defendant. Broker-dealers that provide credit on margin may refer to rule 10b-16 directly to ascertain the rule's requirements and avoid a violation. A scienter requirement would serve only to impede enforcement of rule 10b-16 and to obscure the clarity of its provisions.

## V. CONCLUSION

This Note has attempted to clarify the proper relationship among rule 10b-16, TILA, and section 10(b) of the 1934 Act. Although the SEC promulgated rule 10b-16 pursuant to its authority under section 10(b), Congress expected the rule to supplement TILA's scheme of credit regulation. Accordingly, courts should imply a private cause of action under rule 10b-16, without a scienter requirement, to provide protection analogous to TILA. This resolution of the issues surrounding rule 10b-16 would protect credit customers, further congressional intent, and clarify the rights of future rule 10b-16 claimants.

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55. See *supra* note 9.

56. See 15 U.S.C. § 1640 (1981). See also *Household Consumer Discount Co. v. Vespaziani*, 255 Pa. Super. 367, 373 n.7, 387 A.2d 93, 96 n.7 (1978) (no scienter requirement in action for TILA violation), *rev'd on other grounds*, 490 Pa. 209, 415 A.2d 689 (1980).

57. See *supra* notes 9-13 and accompanying text.

58. 425 U.S. at 206-11.

