



American Revolution Bicentennial

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 76-98
July 14, 1976

OPERATIONS OF SECURITIES CLEARING AGENCIES

Proposed Amendments to Regulations H and Y

**TO ALL MEMBER BANKS,
BANK HOLDING COMPANIES,
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:**

Quoted below is the text of a statement issued June 21 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today proposed amendments to two of its regulations relative to the operations of certain clearing agencies for stock market transactions.

The Board will receive comment on its proposals through July 30, 1976.

The proposals were made in conformity with requirements of the Securities Acts Amendments of 1975. They would affect State member banks or their subsidiaries that are registered clearing agencies and State member banks, bank holding companies, and nonbank subsidiaries of bank holding companies that clear their securities transactions through banks that are clearing agencies.

The Board's proposal would amend its Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to require that State member banks or their subsidiaries, that are registered clearing agencies must file notice with the Board on all final disciplinary sanctions imposed by them on any firm participating in the operations of the clearing agency. The proposal also requires that State member banks acting as clearing agencies file notice with the Board of any denials of applications to participate in their clearing operations.

In addition, the Board proposed to amend Regulation Y (Bank Holding Companies) and Regulation H to establish procedures for requesting

stays and review by the Board of disciplinary sanctions and denials of participation imposed by bank clearing agencies, when the Board is the appropriate regulatory agency.

The Securities and Exchange Commission and the Comptroller of the Currency are issuing similar proposed rules for clearing agencies or participants under their jurisdictions.

Printed on the enclosed pages is an extract from the FEDERAL REGISTER containing the text of the proposed amendments. Comments should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than July 30, 1976. All materials submitted should include the docket number R-0042.

Sincerely yours,

T. W. Plant

First Vice President

Enclosure

FEDERAL RESERVE SYSTEM

[12 CFR Parts 208, 225]

[Docket No. R-0042; Regs. H and Y]

MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; BANK HOLDING COMPANIES

Notice of Proposed Rulemaking

Extract From
FEDERAL REGISTER
VOL. 41, NO. 124
Friday, June 25, 1976
pp. 26231 - 26234

Pursuant to authority of Sections 17, 17A, 19 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78q, q-1, s and w) ("Act"), the Board of Governors proposes to amend Regulation H, Membership of State Banking Institutions in the Federal Reserve System, (12 CFR 208) to require that, a State member bank or any of its subsidiaries that is a registered clearing agency pursuant to Section 17A(b) of the Act, shall file notice with the Board of all final disciplinary actions, denials of participation, conditions, prohibitions or limitations of access to services, summary suspensions or conditions, prohibitions or limitations of participation imposed by it on any participant, in conformity with the form and content of such notices as prescribed herein. This amendment also prescribes the form and content of applications for stays by the Board of final disciplinary sanctions and summary actions of registered clearing agencies when the Board is the appropriate regulatory agency for the applicant and the form and content of applications for review by the Board of final disciplinary sanctions, denials of participation, prohibitions or limitations of access to services imposed by registered clearing agencies.

In connection with this amendment, the Board of Governors also proposes to amend Regulation Y, Bank Holding Companies, (12 CFR 225) prescribing the form and content of applications for stays by the Board of final disciplinary sanctions, and summary actions of registered clearing agencies when the participant or applicant is a bank holding company or a subsidiary of a bank holding company and the form and content of applications for review by the Board of final disciplinary sanctions, denials of participation, prohibitions or limitations of access to services imposed by registered clearing agencies when the participant or applicant is a bank holding company or subsidiary of a bank holding company.

The Securities Acts Amendments of 1975 (the "1975 Amendments") provided for direct oversight jurisdiction to cover disciplinary sanctions and denials of participation imposed by any registered clearing agency. Under the 1975 Amendments such clearing agencies must promptly file notice of such action with (a) the appropriate regulatory agency for the registered clearing agency and

(b) if not the same, with the appropriate regulatory agency for a participant, applicant or person on whom is imposed a final disciplinary sanction, or with respect to whom participation is denied, or access to service is limited or prohibited. Review of any action requiring the filing of such notice may be had either on the motion of the appropriate regulatory agency (the Board with respect to State member banks, bank holding companies, or subsidiaries of bank holding companies in bank clearing agencies, the Comptroller of the Currency with respect to National banks in bank clearing agencies; the Federal Deposit Insurance Corporation with respect to State nonmember insured banks in bank clearing agencies; and the Securities and Exchange Commission (the "Commission") with respect to all others) or on the application of any person aggrieved by such action. However, appeals taken to the Board or the other appropriate regulatory agencies do not automatically stay any action, although stays may be granted by a particular agency where appropriate.

Moreover, the 1975 Amendments grant specific authority, under certain circumstances, to a registered clearing agency to take summary action against participants where such persons have been suspended or expelled from any self-regulatory organization, such as a registered exchange or securities association. A registered clearing agency may also summarily suspend a participant where such clearing agency determines that the participant is in such financial or operational difficulty so as to endanger investors, creditors, or participants in the registered clearing agency or the registered clearing agency itself.

Finally, the 1975 Amendments introduced the concept of a "statutory disqualification." A person is subject to a statutory disqualification if such person:

1. Has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization;
2. Is subject to an order of the Commission denying, suspending or revoking his registration as a broker, dealer or municipal securities dealer or barring his association with a broker, dealer or municipal securities dealer;
3. By his conduct while associated with a broker, dealer or municipal securities dealer if such conduct has been found to be the cause of any effective suspension or expulsion; or has associated with him any person who is known, or in the exercise of reasonable care should be known, to be a disqualified person,
4. Has violated or participated in violating any provisions of the Federal se-

curities acts or the rules of the Municipal Securities Rulemaking Board;

5. Has been convicted within the past ten years of any felony or misdemeanor which involves certain crimes relating, generally, to securities transactions or business, perjury or the misappropriation of funds or securities;

6. Is enjoined from any action, conduct or practice in connection with the securities industry or the purchase or sale of any security; or

7. Has willfully made application or submitted a report containing a false or misleading statement with respect to any material fact or omitted to state any material fact which is required to be stated to a self-regulatory organization.

These statutory disqualifications permit, but do not automatically require, a registered clearing agency to deny or condition participation, but the Act requires the registered clearing agency to take such action if the Commission so orders. A registered clearing agency proposing to admit to participation a person subject to a statutory disqualification must give notice to the Commission 30 days prior to such action.

The notice provisions of this amendment provide for the content of notices relating to four general types of adjudicatory actions taken by a registered clearing agency for which the Board is the appropriate regulatory agency as follows:

1. Notice of Final Disciplinary Action.
2. Notice of Final Denial, Prohibition, Termination or Limitation Based on Qualification or Administrative Rules.

3. Notice of Final Action Based on a Statutory Disqualification.

4. Notice of Summary Suspension of Participation or Summary Limitation or Prohibition of Access to Services.

Section 17A(b) (4) of the Act requires that disciplinary sanctions, denials of participation and similar adjudicatory findings include supporting statements of the registered clearing agency. The proposed notice provisions were designed to obtain a report from the registered bank clearing agency containing its statements. The notice provisions have also been structured to satisfy, at the same time, the requirement of Section 19(d) of the Act that such actions be promptly reported to the Board. Moreover, the notice provisions ensure that such reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Board or the appropriate regulatory agency not merely to determine whether the case should be called up for review on its own motion but also to ascertain generally whether registered bank clearing agencies are adequately carrying out their responsibilities under the Act.

The stay provisions of the proposed amendment would apply in the case of a registered bank clearing agency only where the disciplinary or denial action is taken against a participant or applicant for which the Board is the appropriate regulatory agency. Such persons desiring to stay registered bank clearing

agency actions would be required to make application for such a stay pursuant to these provisions.

The proposed amendment also provides the procedures for application for review of all final disciplinary sanctions, participation denials, and similar actions by registered bank clearing agencies against a participant, applicant, or person for which the Board is the appropriate regulatory organization. The Secretary of the Board or other designated officer acting for the Board would serve a copy of the application for review on the registered bank clearing agency which, within 10 days, must certify and file with the Board one copy of the record and three copies of an index of the record. The Secretary or the Board's designee would then serve on the parties copies of the index and any other papers subsequently filed. The applicant may file a brief within 20 days after receipt of the copy of the index and, within 20 days thereafter the registered bank clearing agency may file its brief. Oral argument may be requested by the applicant or the registered bank clearing agency which request may be granted or denied at the discretion of the Board.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. Pursuant to the amendment, new paragraphs (g), (h) and (i) would be added to § 208.8 as set forth below:

§ 208.8 Banking practices.

(g) *State member banks as registered clearing agencies.* (1) *Requirement of notice*—(i) Any State member bank or any of its subsidiaries that is a registered clearing agency pursuant to Section 17A(b) of the Securities Exchange Act of 1934 (the "Act"), shall file with the Board and (if other than the Board) the appropriate regulatory agency for a participant, applicant or person affected, notice of all final disciplinary actions, denials, conditions, prohibitions or limitations respecting participation or access to services and summary suspensions, conditions, prohibitions, limitations, imposed by such registered clearing agency on any of its participants, applicants or persons, such notice to be in conformity with the form and content prescribed herein.

(ii) For the purposes of this paragraph "final disciplinary action" shall mean the imposition of any final disciplinary sanction pursuant to Section 17A(b) (3) (G) of the Act or other action of a registered clearing agency which, after notice and opportunity for hearing, results in any final disposition of charges of:

(A) One or more violations of the rules of such registered clearing agency;

(B) Acts or practices constituting a statutory disqualification of a type defined in subparagraph (D) or (E) (except prior convictions) of Section 3(a) 39 of the Act.

Notice of such final disciplinary action shall be promptly filed with the Board in accordance with paragraph (g) (2) of this section.

(iii) Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action with respect to any person constituting a denial, prohibition, or limitation of participation or of access to services offered by it, and which is based on an alleged failure of any person to:

(A) Comply with qualification standards established by rules of the appropriate regulatory agency or such registered clearing agency; or

(B) Comply with any administrative requirements of such registered clearing agency (including failure to pay entry or other dues or fees or to file prescribed forms or reports) not involving charges of violations which may lead to a disciplinary sanction shall not be considered a "final disciplinary action" for purposes of this paragraph; but notice thereof shall be promptly filed with the Board in accordance with paragraph (g) (3) of this section, *provided, however*, that no disposition of a matter shall be considered "final" pursuant to this paragraph which results merely from a notice of such failure to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted his administrative remedies within such registered clearing agency with respect to such a matter.

(iv) Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action with respect to any person which:

(A) Denies or conditions participation in or prohibits or limits access to services offered by such registered clearing agency; and

(B) Is based upon a statutory disqualification of a type defined in subparagraph (A), (B) or (C) of Section 3(a) 39 of the Act or consisting of a prior conviction, as described in subparagraph (E) of said Section 3(a) 39 shall not be considered a "final disciplinary action" for purposes of this paragraph; but notice thereof shall be promptly filed with the Board in accordance with paragraph (g) (4) of this section, *provided, however*, that no disposition of a matter shall be considered "final" pursuant to this paragraph where such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted his administrative remedies within such registered clearing agency with respect to such a matter.

(v) Any registered clearing agency for which the Board is the appropriate regulatory agency that summarily suspends a participant, or summarily limits or prohibits any person with respect to access to or services offered by the organization pursuant to the provisions of Section 17A(b) (5) (C) of the Act, shall within 24 hours of the effectiveness of such summary suspension, limitation or prohibition notify the Board and the appro-

appropriate regulatory agency for the participant (if other than the Board) of such action. Such notice of summary suspension, limitation or prohibition filed with the Board shall be in accordance with paragraph (g) (5) of this section.

(2) *Content of notice of final disciplinary action.* Any notice of a final disciplinary action filed with the Board pursuant to this amendment shall consist of the following, as appropriate:

(i) The name of the respondent concerned together with his or her last known place of residence or business as reflected on the records of the registered clearing agency and the name of the person, committee, or other organizational unit that brought the charges involved;

(ii) A statement describing the investigative or other origin of the action;

(iii) As charged in the proceeding, the specific provisions of the rules of the registered clearing agency and the answer of the respondent to the charges;

(iv) A statement setting forth findings of fact with respect to any act or practice that such respondent was charged with having engaged in or omitted; the conclusion of the registered clearing agency as to whether such respondent violated any provision as charged; and a statement of the registered clearing agency in support of its resolution of the principal issues raised in the proceedings;

(v) A statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction has or will become effective, together with a finding, if appropriate, as to whether such respondent was a cause of any sanction imposed upon any other person;

(vi) A statement concerning whether any stay of any sanction imposed should be granted, pending final determination on review thereof by the Board or the appropriate regulatory agency, if any person aggrieved thereby applies for such review; and

(vii) Such other matters as the registered clearing agency may deem relevant.

(3) *Content of notice of final denial, prohibition, termination of limitation based on qualification or administrative rules.* Any notice of a final denial, prohibition, termination or limitation based on qualification or administrative rules filed with the Board pursuant to this amendment shall consist of the following, as appropriate:

(i) The name of each person concerned together with his or her last known place of residence or business as reflected on the records of the registered clearing agency;

(ii) The specific provisions of the rules of the registered clearing agency, upon which the action of the registered clearing agency was based; and the answer of the person concerned;

(iii) A statement setting forth findings of fact and conclusions as to each alleged failure of the person to comply with qualification standards, or comply with administrative obligations, and a statement of the registered clearing agency

in support of the resolution of the principal issues raised in the proceeding;

(iv) The date upon which such action has or will become effective; and

(v) Such other matters as the registered clearing agency deems relevant.

(4) *Content of notice of final action based upon prior adjudicated statutory disqualification.* Any notice of a final action based upon a prior adjudicated statutory disqualification filed with the Board pursuant to this amendment shall consist of the following, as appropriate:

(i) The name of the person concerned, together with his or her last known place of residence or business, as reflected on the records of the organization;

(ii) A statement setting forth the principal issues raised, the answer of any person concerned, and a statement of the registered clearing agency in support of the resolution of the principal issues raised in the proceeding;

(iii) Any description furnished by or on behalf of the person concerned of the activities engaged in by the person since the adjudication upon which the disqualification is based;

(iv) Any description furnished by or on behalf of the person concerned of the prospective business or employment in which the person plans to engage and the manner and extent of supervision to be exercised over and by such person;

(v) A copy of the order or decision of the court, the appropriate regulatory agency or the self-regulatory organization which adjudicated the matter giving rise to such statutory disqualification;

(vi) The nature of the action taken and the date upon which such action is to be made effective; and

(vii) Such other matters as the registered clearing agency deems relevant.

(5) *Content of notice of summary suspension of participation or summary limitation or prohibition of access to services.* Any notice of summary suspension of participation or summary limitation or prohibition of access of services filed with the Board pursuant to this amendment shall contain at least the following information:

(i) The name of the person concerned together with his or her last known place of residence or business as reflected on the records of the registered clearing agency;

(ii) The date upon which such summary action has or will become effective;

(iii) If such summary action is based upon the provision of Section 17A(b) (5) (C) (i) of the Act, a copy of the relevant order or decision of the self-regulatory organization;

(iv) If such summary action is based upon the provisions of Section 17A(b) (5) (C) (ii) or (iii) of the Act, a statement describing as appropriate:

(A) The default of any delivery of funds or securities to any clearing facility based upon which such registered clearing agency determined that such suspension was necessary for, or the participant could not be permitted to continue to do business with, safety to such registered clearing agency, in-

vestors, creditors, or participants in the registered clearing agency;

(B) The financial or operating difficulty of the participant based upon which such registered clearing agency determined that the participant could not be permitted to continue to do business with safety to investors, creditors or other participants in the registered clearing agency; or

(C) The failure to meet qualification requirements or other prerequisites for access and the basis upon which such organization determined that the person concerned could not be permitted to continue to have access with safety to investors, creditors, the registered clearing agency or participants of the registered clearing agency.

(v) The nature and effective date of the suspension, limitation or prohibition; and

(vi) Such other matters as the organization deems relevant.

(h) *Applications for stays of disciplinary sanctions or summary suspensions by a registered clearing agency.* If a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency, imposes any final disciplinary sanction pursuant to Section 17A(b) (3) (G) of the Act, or summarily suspends or limits or prohibits access pursuant to Section 17A(b) (5) (C) of the Act, any person aggrieved thereby for which the Board is the appropriate regulatory agency may file with the Board, by telegram or otherwise, a request for a stay of imposition of such action. Such request shall be in writing and shall include a statement as to why such stay should be granted.

(i) *Applications for review of final disciplinary sanctions, denials of participation or prohibitions or limitations of access to services imposed by registered clearing agencies.* (1) *Scope.*—Proceedings on an application to the Board under Section 19(d) (2) of the Act by a participant that is subject to the Board's jurisdiction for review of any final disciplinary sanction, denial, or conditioning of participation, or prohibition or limitation with respect to access to registered clearing agency services imposed by a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency shall be governed by this paragraph.

(2) *Procedure.* (i) An application for review pursuant to Section 19(d) (2) of the Act shall be filed with the Board within 30 days after notice thereof is filed pursuant to Section 19(d) (1) of the Act and received by the aggrieved person applying for review, or within such longer period as the Board may determine. The Secretary of the Board shall serve a copy of the application on the registered clearing agency, which shall, within ten days after receipt of the application, certify and file with the Board one copy of the record upon which the action complained of was taken, together with three copies of an index to such record. The Secretary shall serve upon the par-

ties copies of such index and any papers subsequently filed.

(ii) Within 20 days after receipt of a copy of the index, the applicant shall file a brief or other statement in support of his application which shall state the specific grounds on which the application is based, the particular findings of the organization to which objection is taken, and the relief sought. Any application not perfected by such timely brief or statement may be dismissed as abandoned.

(iii) Within 20 days after receipt of the applicant's brief or statement the organization may file an answer thereto, and within 10 days of receipt of any such answer the applicant may file a reply. Any such papers not filed within the time provided by paragraphs (i), (i) (2), (ii), or (iii) of this section will not be received except upon special permission of the Board.

(iv) On its own motion, the Board may direct that the record under review be supplemented with such additional evidence as it may deem relevant. Nevertheless, the registered clearing agency and persons who may be aggrieved by such agency's action shall be obliged to adduce all evidence that they deem relevant in the proceedings before the registered clearing agency, and no such person shall be entitled to adduce additional evidence unless it is shown to the satisfaction of the Board that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in such proceedings. Any request for leave to adduce additional evidence shall be filed promptly so as not to delay the disposition of the proceeding.

(v) Oral argument before the Board may be requested by the applicant or the registered clearing agency as follows: (A) by the applicant with his brief or statement or within 10 days after receipt of the registered clearing agency's answer, or (B) by the registered clearing agency with its answer. The Board, in its discretion, may grant or deny any request for oral argument and, where it deems it appropriate to do so, the Board will consider an application on the basis of the papers filed by the parties, without oral argument.

(vi) The Board's Rules of Practice for Formal Hearings shall apply to review proceedings under this rule to the extent that they are not inconsistent with this rule. Attention is directed particularly to § 263.21 of the Rules of Practice relating to formal requirements as to papers filed.

PART 225—BANK HOLDING COMPANIES

2. In connection with this amendment, the Board of Governors also proposes to amend Regulation Y, Bank Holding Companies, (12 CFR 225) by adding new

paragraphs (d) and (e) to § 225.5 to read as follows:

§ 225.5 Administration.

(d) *Applications for stays of disciplinary sanctions or summary suspensions by a registered clearing agency.* If a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency, imposes any final disciplinary sanction pursuant to Section 17A (b) (3) (G) of the Act, or summarily suspends or limits or prohibits access pursuant to Section 17A (b) (5) (C) of the Act, any person aggrieved thereby for which the Board is the appropriate regulatory agency may file with the Board, by telegram or otherwise, a request for a stay of imposition of such action. Such request shall be in writing and shall include a statement as to why such stay should be granted.

(e) *Applications for review of final disciplinary sanctions, denials of participation or prohibitions or limitations of access to services imposed by registered clearing agencies.* (1) *Scope.*—Proceedings on an application to the Board under Section 19(d) (2) of the Act by a participant that is subject to the Board's jurisdiction for review of any final disciplinary sanction, denial, or conditioning of participation, or prohibition or limitation with respect to access to registered clearing agency services imposed by a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency shall be governed by this paragraph.

(2) *Procedure.* (i) An application for review pursuant to Section 19(d) (2) of the Act shall be filed with the Board within 30 days after notice thereof is filed pursuant to Section 19(d) (1) of the Act and received by the aggrieved person applying for review, or within such longer period as the Board may determine. The Secretary of the Board shall serve a copy of the application on the registered clearing agency, which shall, within ten days after receipt of the application, certify and file with the Board one copy of the record upon which the action complained of was taken, together with three copies of an index to such record. The Secretary shall serve upon the parties copies of such index and any papers subsequently filed.

(ii) Within 20 days after receipt of a copy of the index, the applicant shall file a brief or other statement in support of his application which shall state the specific grounds on which the application is based, the particular findings of the organization to which objection is taken, and the relief sought. Any application not perfected by such timely brief or statement may be dismissed as abandoned.

(iii) Within 20 days after receipt of the applicant's brief or statement the organization may file an answer thereto, and within 10 days of receipt of any such answer the applicant may file a reply. Any such papers not filed within the time provided by paragraphs (e) (2) (i), (ii), or (iii) of this section will not be received except upon special permission of the Board.

(iv) On its own motion, the Board may direct that the record under review be supplemented with such additional evidence as it may deem relevant. Nevertheless, the registered clearing agency and persons who may be aggrieved by such agency's action shall be obliged to adduce all evidence that they deem relevant in the proceedings before the registered clearing agency, and no such person shall be entitled to adduce additional evidence unless it is shown to the satisfaction of the Board that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in such proceedings. Any request for leave to adduce additional evidence shall be filed promptly so as not to delay the disposition of the proceeding.

(v) Oral argument before the Board may be requested by the applicant or the registered clearing agency as follows: (A) by the applicant with his brief or statement or within 10 days after receipt of the registered clearing agency's answer, or (B) by the registered clearing agency with its answer. The Board, in its discretion, may grant or deny any request for oral argument and, where it deems it appropriate to do so, the Board will consider an application on the basis of the papers filed by the parties, without oral argument.

(vi) The Board's Rules of Practice for Formal Hearings shall apply to review proceedings under this rule to the extent that they are not inconsistent with this rule. Attention is directed particularly to § 263.21 of the Rules of Practice relating to formal requirements as to papers filed.

To aid in consideration of this matter by the Board, interested persons are invited to submit relevant data, views, or arguments concerning the proposed amendments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 30, 1976. All material submitted should include the docket number R-0042. Such material will be made available for inspection and copying upon request, except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

By order of the Board of Governors, June 21, 1976.

[SEAL] GRIFFITH L. CARWOOD,
Assistant Secretary of the Board.

[FR Doc. 76-18502 Filed 6-24-76; 8:45 am]