FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 80-20
February 4, 1980

AMENDMENT TO REGULATION H

TO ALL MEMBER BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

In our Circular No. 80-5, dated January 15, 1980, you were furnished the text of an amendment to Regulation H, effective January 1, 1980. Enclosed is a copy of all amendments to Regulation H which have been consolidated into one set of amendments. Member banks and others who maintain Regulations Binders should file the enclosed amendments in your binders. All other amendments should be removed from the binders and destroyed.

Additional copies of the amendment will be furnished upon request to the Secretary's Office of this Bank, Ext. 6267.

Sincerely yours,

Robert H. Boykin

First Vice President

Enclosure

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

AMENDMENTS TO REGULATION H†

1. Effective December 21, 1973, sections 208.10* (b) and (c) are amended to read as follows:

SECTION 208.10*—PUBLICATION OF REPORTS OF MEMBER BANKS AND THEIR AFFILIATES

* * * * *

(b) **Report of affiliates.**[10] (1) If reports of affiliates are requested by the Board of Governors of the Federal Reserve System, each report of an affiliate of a member State bank, including a holding company affiliate, shall be published at the same time and in the same newspaper as the affiliated bank's own condition report submitted to the Federal Reserve Bank, unless an extension of time for submission of the report of the affiliate has been granted under authority of the Board of Governors of the Federal Reserve System. When such extension of time has been granted, the report of the affiliate must be submitted and published before the expiration of such extended period in the same newspaper as the condition report of the bank was published.

(2) The copy of the report for the use of the printer for publication should be prepared on Form F.R. 220a. The published information shall agree in every respect with that shown on the face of the report of the affiliate furnished to the Federal Reserve Bank by the affiliated member bank, except that any item appearing under the caption "Financial relations with bank" against which the word "none" appears on the report furnished to the Federal Reserve Bank may be omitted in the published statement of the affiliate: *Provided*, That if the word "none" is shown against all of the items appearing under such caption in the report furnished to the Federal Reserve Bank the caption "Financial relations with bank" shall appear in the published statement followed by the word "none." All signatures shall be the same in the published statement as in the original report submitted to the Federal Reserve Bank, but the signatures may be typewritten or otherwise copied on the report for publication.

(3) A copy of the printed report shall be submitted to the Federal Reserve Bank attached to the certificate on Form F.R. 220a.

(c) **Waiver of reports of affiliates.** Pursuant to section 21 of the Federal Reserve Act (12 U.S.C. 486), the Board of Governors of the Federal Reserve System waives the requirement for the submission of reports of affiliates of State bank members of the Federal Reserve System, unless such reports are specifically requested by the Board of Governors. The Board of Governors of the Federal Reserve System may require the submission of reports which are necessary to disclose fully relations between member banks and their affiliates and the effect thereof upon the affairs of member banks.

* * * * *

*Previously Section 208.9; renumbered March 2, 1974.

[10] Section 21 of the Federal Reserve Act, among other things, provides as follows: "Whenever member banks are required to obtain reports from affiliates, or whenever affiliates of member banks are required to submit to examination, the Board of Governors of the Federal Reserve System or the Comptroller of the Currency, as the case may be, may waive such requirements with respect to any such report or examination of any affiliate if in the judgment of the said Board or Comptroller, respectively, such report or examination is not necessary to disclose fully the relations between such affiliate and such bank and the effect thereof upon the affairs of such bank." In any case where the Board has waived the filing of a report of an affiliate, no publication of a report of an affiliate is required.

† For this Regulation to be complete as amended effective January 1, 1980, retain:

1) Printed Regulation pamphlet as amended effective March 18, 1969.
2) This slip sheet. (Destroy April 1978 and December 1978 slip sheets.)

2. Effective March 2, 1974, Regulation H (12 CFR 208) will be amended by adding a new section, 208.8, Banking Practices, and renumbering the succeeding sections. The Table of Contents of Part 208 will be changed to read as follows:

SEC.

As an incident to these amendments, §§ 208.8, 208.9, 208.10, and 208.11 will be redesignated §§ 208.9, 208.10, 208.11, and 208.12 respectively.

3. Effective March 2, 1974, a new section, 208.8 is added as follows:

SECTION 208.8—BANKING PRACTICES

(a) **Scope.** No State member bank shall engage in practices which are unsafe or unsound or which result in a violation of law, rule, or regulation, or which violate any condition imposed by or agreements entered into with the Board. This section outlines certain of the practices in which State member banks should not engage.

(b) **Waiver.** A State member bank has the right to petition the Board to waive the conditions of section 208.8. A waiver may be granted upon a showing of good cause. The Board in its discretion may choose to limit, among other items, the scope, duration, and timing of the waiver.

(c) **Reserved.**

(d) **Reserved.**

(e) **Loans by State member banks in identified flood hazard areas.**

(1) Property securing loan must be insured against flood. No State member bank shall make, increase, extend or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or to the maximum limit of coverage made available with respect to the particular type of property under the Act, whichever is less. Nothwithstanding the foregoing provision, flood insurance shall not be required on any State-owned property that is covered under an adequate policy of self-insurance satisfactory to the Secretary of Housing and Urban Development who shall publish and periodically revise the list of states falling within the exemption provided in this paragraph.

† (2) Prohibition as to loans in nonparticipating communities. On or after July 1, 1975, no State member bank shall make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, unless the community in which such is situated is then participating in the national flood insurance program.

†† (3) Records of compliance. Each State member bank shall maintain, in connection with all loans secured by improved real estate or a mobile home, sufficient records to indicate the method used by the bank to determine whether or not such loans fall within the provisions of this section 208.8(e).

4. Effective September 16, 1974, section 208.8 is amended as follows:

SECTION 208.8—BANKING PRACTICES

* * * * *

(c) **Effective on other banking practices**

Nothing in this section shall be construed as restricting in any manner the Board's authority to deal with any banking practice which is deemed to be unsafe or unsound or otherwise not in accordance with law, rule, or regulation or which violates any condition imposed in writing by the Board in connection with the granting of any application or other request by a State member bank, or any written agreement entered into by such bank with the Board. Compliance with the provisions of this section shall neither relieve a State member bank of its duty to conduct all operations in a safe and sound manner nor prevent the Board from taking whatever action it deems necessary and desirable to deal with general or specific acts or practices which, although

†Revoked April 20, 1978. See page 9.

††Renumbered April 20, 1978. See page 9.

perhaps not violating the provisions of this section, are considered nevertheless to be an unsafe or unsound banking practice.

(d) **Letters of credit and acceptances**

1. **Definitions**

For the purpose of this paragraph, "standby letters of credit" include every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuer (1) to repay money borrowed by or advanced to or for the account of the account party or (2) to make payment on account of any evidence of indebtedness undertaken by the account party, or (3) to make payment on account of any default by the account party in the performance of an obligation.[6a] An "ineligible acceptance" is a time draft accepted by a bank, which does not meet the requirements for discount with a Federal Reserve Bank.

2. **Restrictions**

A. A state member bank shall not issue, renew, extend, or amend a standby letter of credit (or other similar arrangement, however, named or described) or make an ineligible acceptance or grant any other extension of credit if, in the aggregate, the amount of all standby letters of credit and ineligible acceptances issued, renewed, extended, or amended on or after the effective date of this amendment, when combined with other extensions of credit issued by the bank would exceed the legal limitations on loans imposed by the State (including limitations to any one customer or on aggregate extensions of credit) or exceed legal limits pertaining to loans to affiliates under federal law (12 U.S.C. 371(c)); provided that, if any State has a separate limitation on the issuance of letters of credit or acceptances which apply to a standby letter of credit or to ineligible acceptances respectively, then the separate limitation shall apply in lieu of the standard loan limitation.

B. No State member bank shall issue a standby letter of credit or ineligible acceptance unless the credit standing of the account party under any letter of credit, and the customer of an ineligible acceptance, is the subject of credit analysis equivalent to that applicable to a potential borrower in an ordinary loan situation.

C. If several banks participate in the issuance of a standby letter of credit or ineligible acceptance under a *bona fide* binding agreement which provides that, regardless of any event, each participant shall be liable only up to a certain percentage or certain amount of the total amount of the standby letter of credit or ineligible acceptance issued, a State member bank need only include the amount of its participation for purposes of this section; otherwise, the entire amount of the letter of credit or acceptance must be included.

3. **Disclosure; Recordkeeping**

The amount of all outstanding standby letters of credit and ineligible acceptances, regardless of when issued, shall be adequately disclosed in the bank's published financial statements.

Each State member bank shall maintain adequate control and subsidiary records of its standby letters of credit comparable to the records maintained in connection with the bank's direct loans so that at all times the bank's potential liability thereunder and the bank's compliance with this section (d) may be readily determined.

4. **Exceptions**

A standby letter of credit is not subject to the restrictions set forth above in the following situations:

A. prior to or at the time of issuance of the credit, the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit or

B. prior to or at the time of issuance, the bank has set aside sufficient funds in a segregated, clearly earmarked deposit account to cover the bank's maximum liability under the standby letter of credit.

* * * * *

5. Effective September 22, 1974, section 208.8 (e) is amended to add a new subparagraph to read as follows:

SECTION 208.8—BANKING PRACTICES

* * * * *

(e) **Loans by State member banks in identified flood hazard areas. * * ***

†(4) Notice to borrower of special flood hazard. After September 21, 1974, each State member bank shall as a condition of making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having

[6a] As defined, "standby letter of credit" would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not "guaranty" payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation M.

†Renumbered 3 and amended, effective April 20, 1978.
See page 9

special flood hazards, mail or deliver as soon as feasible but not less than 10 days in advance of closing of the transaction (or not later than the bank's commitment, if any, if the period between commitment and closing is less than 10 days) a written notice to the borrower that the property securing the loan is in an area so identified. In lieu of the notification required in this section, a bank may obtain satisfactory written assurances from a seller or lessor that such seller or lessor has notified the borrower, prior to the execution of any agreement for sale or lease, that the property securing the loan is in an area so identified. A bank shall require the borrower, prior to closing, to provide the bank with a written acknowledgment that the borrower realizes that the property, securing the loan or upon which a mobile home is or will be located, is in a special flood hazard area.

6. Effective December 1, 1975, section 208.8 (f) is added to read as follows:

SECTION 208.8—BANKING PRACTICES

* * * * *

(f) **State member banks as transfer agents.**

(1) On or after December 1, 1975, no State member bank or any of its subsidiaries shall act as transfer agent, as defined in Section 3(a)(25) of the Securities Exchange Act of 1934 ("Act"), with respect to any security registered under Section 12 of the Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that Section, unless it shall have filed a registration statement with the Board in conformity with the requirements of Form TA-1, which registration statement shall have become effective as hereinafter provided. Any registration statement filed by a State member bank or its subsidiary shall become effective on the thirtieth day after filing with the Board unless the Board takes affirmative action to accelerate, deny or postpone such registration in accordance with the provisions of Section 17A(c) of the Act. Such filings with the Board will constitute filings with the Securities and Exchange Commission for purposes of Section 17(c)(1) of the Act.

(2) If the information contained in Items 1-6 of Form TA-1 becomes inaccurate, misleading or incomplete for any reason, the bank or its subsidiary shall, within twenty-one calendar days thereafter file an amendment to Form TA-1 correcting the inaccurate, misleading or incomplete information. Within thirty calendar days following the close of any calendar year (beginning with the period from the date as of which the registration statement is prepared to December 31, 1976) during which the information required by Item 7 of Form TA-1 becomes inaccurate, misleading or incomplete, the bank or its subsidiary shall file an amendment to Form TA-1 correcting the inaccurate, misleading or incomplete information.

(3) Each registration statement on Form TA-1 or amendment thereto shall constitute a "report" or "application" within the meaning of section 17, 17A(c) and 32(a) of the Act.

7. Effective September 1, 1977, section 208.8 is amended by adding a new paragraph (j) to read as follows:

SECTION 208.8—BANKING PRACTICES

* * * * *

(g) **[Reserved]**

(h) **[Reserved]**

(i) **[Reserved]**

(j) **State member banks, and subsidiaries, departments, and divisions thereof, which are municipal securities dealers.**

(1) For purposes of this paragraph, the terms herein have the meanings given them in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)) and the rules of the Municipal Securities Rulemaking Board. The term "Act" shall mean the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.).

(2) On and after October 31, 1977, a State member bank of the Federal Reserve System, or a subsidiary or a department of a division thereof, that is a municipal securities dealer shall not permit a person to be associated with it as a municipal securities principal or municipal securities representative unless it has filed with the Board an original and two copies of Form MSD-4, "Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer," completed in accordance with the instructions contained therein, for that person. Form MSD-4 is prescribed by the Board for purposes of paragraph (b) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons."

(3) Whenever a municipal securities dealer receives a statement pursuant to paragraph (c) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons," from a person for whom it has filed a Form MSD-4 with the Board pursuant to subparagraph (2) of this paragraph, such dealer shall, within ten days thereafter, file three copies of that statement with the Board accompanied by an original and two copies of a transmittal letter which includes the name of the dealer and a reference to the material transmitted identifying the person involved and is signed by a municipal securities principal associated with the dealer.

(4) Within thirty days after the termination of the association of a municipal securities principal or municipal securities representative with a municipal dealer that has filed a Form MSD-4 with the Board for that person pursuant to subparagraph (2) of this paragraph, such dealer shall file an original and two copies of a notification of termination with the Board under this paragraph shall be the date of filing. Such a Form MSD-4, Form MSD-5, or statecipal Securities Representative Associated with a Bank Municipal Securities Dealer," completed in accordance with instructions contained therein.

(5) A municipal securities dealer that files a Form MSD-4, Form MSD-5, or statement with the Board under this paragraph shall retain a copy of each such Form MSD-4, Form MSD-5, or statement until at least three years after the termination of the employment or other association with such dealer of the municipal securities principal or municipal securities representative to whom the form or statement relates.

(6) The date that the Board receives a Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall be the date of filing. Such a Form MSD-4, Form MSD-5, or statement which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4, Form MSD-5, or statement has been completed in accordance with the applicable requirements or that any information reported therein is true, current, complete, or not misleading. Every Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall constitute a filing with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act (15 U.S.C. § 79q(c)(1)) and a "report," "application," or "document" within the meaning of section 32(a) of the Act (15 U.S.C. § 78ff(a)). (15 U.S.C. §§ 78o-4(c)(5), 78q, and 78w and 122 U.S.C. 248(a)).

8. Effective October 3, 1977, section 208.8 is amended by adding the following new paragraphs (g), (h), and (i) as follows:

SECTION 208.8—BANKING PRACTICES

* * * * *

(g) State member banks as registered clearing agencies.

(1) *Requirement of notice*

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"), which imposes any final disciplinary sanction on any participant therein, denies participation to any applicant or prohibits or limits any person in respect to access to services offered by such registered clearing agency, shall file with the Board and the appropriate regulatory agency (if other than the Board) for a participant or applicant notice thereof in the manner prescribed herein.

(2) *Notice of final disciplinary action*

Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final disciplinary action with respect to any participant shall promptly file a notice thereof with the Board in accordance with subparagraph (3) of this paragraph. For the purposes of this paragraph "final disciplinary action" shall mean the imposition of any disciplinary sanction pursuant to § 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; or

(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.

However, if a registered clearing agency fee schedule specifies certain charges for errors made by its participants in giving instructions to the registered clearing agency which are *de minimis* on a per error basis and whose purpose is in part to provide revenues to the registered clearing agency to compensate it for effort expended in beginning to process an erroneous instruction, such error charges shall not be considered a "final disciplinary action" for purposes of this paragraph.

(3) *Content of notice required by subparagraph (2)*

Any notice filed pursuant to subparagraph (2) of this paragraph shall consist of the following, as appropriate:

(A) the name of the respondent concerned together with the respondent's last known address 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; except that, as to any respondent who has been found not to have violated a provision covered by a charge, identifying information with respect to such person may be deleted insofar as the notice reports the disposition of that charge and, prior to the filing of the notice, the respondent does not request that identifying information be included in the notice.

(B) a statement describing the investigative

or other origin of the action;

(C) as charged in the proceeding, the specific provision or provisions of the rules of the registered clearing agency violated by such person or the statutory disqualification referred to in clause (B) of subparagraph (2) of this paragraph and a statement describing the answer of the respondent to the charges;

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

(E) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction has or will become effective; and

(F) such other matters as the registered clearing agency may deem relevant.

(4) *Notice of final denial, prohibition, termination, or limitation based on qualification or administrative rules*

Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action which denies participation to, or conditions the participation of, any person or prohibits or limits any person with respect to access to services offered by the clearing agency based on an alleged failure of such person to:

(A) comply with the qualification standards prescribed by the rules of such registered clearing agency pursuant to Section 17A(b)(4)(B) of the Act; 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 subparagraph (2), but notice thereof shall be promptly filed with the Board and the appropriate regulatory agency (if other than the Board) for the affected person in accordance with subparagraph (5); provided, however, that no such action shall be considered "final" pursuant to this subparagraph that results merely from a notice of such failure to the persons affected, if such person has not sought an adjudication of the matter,. including a hearing, or otherwise exhausted his administrative remedies within the registered clearing agency with respect to such a matter.

(5) *Content of notice required by subparagraph (4)*

Any notice pursuant to subparagraph (4) of this paragraph shall consist of the following, as appropriate:

(A) the name of each person concerned together with each such person's last known address as reflected in the records of the registered clearing agency;

(B) the specific grounds upon which the action of the registered clearing agency was based, and a statement describing the answer of the person concerned;

(C) 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;

(D) the data upon which such action has or will become effective; and

(E) such other matters as the registered clearing agency deems relevant.

(6) *Notice of final action based upon prior adjudicated statutory disqualifications*

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

(A) denies or conditions participation to any person 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 promptly file notice thereof with the Board and the appropriate regulatory agency (if other than the Board) for the affected person in accordance with subparagraph (7) of this paragraph; provided, however, that no such action shall be considered "final" pursuant to this subparagraph 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 the registered clearing agency with respect to such a matter.

(7) *Content of notice required by subparagraph (6)*

Any notice pursuant to subparagraph (6) of this

paragraph shall consist of the following, as appropriate:

(A) the name of the person concerned, together with each such person's last known address as reflected in the records of the registered clearing agency;

(B) 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 its resolution of the principal issues raised in the proceeding;

(C) 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;

(D) 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;

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

(F) such other matters as the registered clearing agency deems relevant.

(8) *Notice of summary suspension of participation*

Any registered clearing agency for which the Board is the appropriate regulatory agency that summarily suspends or closes the accounts of a participant pursuant to the provisions of Section 17A(b)(5)(C) of the Act, shall within one business day after the effectiveness of such action file notice thereof with the Board and the appropriate regulatory agency for the participant (if other than the Board) of such action in accordance with subparagraph (9) of this paragraph.

(9) *Content of notice of summary suspension of participation*

Any notice pursuant to subparagraph (8) of this paragraph shall contain at least the following information, as appropriate:

(A) the name of the participant concerned together with the participant's last known address as reflected in the records of the registered clearing agency;

(B) the date upon which such summary action has or will become effective;

(C) If such summary action is based upon the provisions of Section 17A(b)(5)(C)(i) of the Act, a copy of the relevant order or decision of the self-regulatory organization if available to the registered clearing agency;

(D) if such summary action is based upon the provisions of Section 17A(b)(5)(C)(ii) of the Act, a statement describing the default of any delivery of funds or securities to the registered clearing agency;

(E) if such summary action is based upon the provisions of Section 17A(b)(5)(C)(iii) of the Act, a statement describing the financial or operating difficulty of the participant based upon which the registered clearing agency determined that such suspension and closing of accounts was necessary for the protection of the clearing agency, its participants, creditors or investors;

(F) the nature and effective date of the suspension; and

(G) such other matters as the registered clearing agency 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 participant 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) **Application 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 person that is subject to the Board's jurisdiction for review of any action 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*

(A) An application for review pursuant to Section 19(d)(2) of the Act shall be filed with the Board within 30 days after notice is filed by the registered clearing agency 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 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.

(B) 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 registered clearing agency to which objection is taken, the relief sought. Any application not perfected by such timely brief or statement may be dismissed as abandoned.

(C) Within 20 days after receipt of the applicant's brief or statement the registered clearing agency 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 items (A), (B), or (C) will not be received except upon special permission of the Board.

(D) 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 clearing agency's action shall not be entitled to adduce evidence not presented in the proceedings before the registered clearing agency 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 present such evidence in the proceedings before the registered clearing agency. Any request for leave to adduce additional evidence shall be filed promptly so as not to delay the disposition of the proceeding.

(E) Oral argument before the Board may be requested by the applicant or the registered clearing agency as follows:

(i) by the applicant with his brief or statement or within 10 days after receipt of the registered clearing agency's answer, or

(ii) 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.

(F) 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 Section 263.21 of the Rules of Practice relating to formal requirements as to the papers filed.

9. Effective December 31, 1977, Section 208.8(f) is amended by adding a new paragraph (4) to read as follows:

SECTION 208.8—BANKING PRACTICES

* * * * *

(f) **State member banks as transfer agents.**

* * * * *

(4) Every State member bank or any of its subsidiaries that is registered with the Board as a transfer agent is exempted until April 3, 1978, from that part of the provision of Section 208.8(f)(2) that states that "[w]ithin thirty calendar days following the close of any calendar year . . . during which the information required by Item 7 of Form TA-1 becomes inaccurate, misleading, or incomplete, the bank or its subsidiary shall file an amendment to Form TA-1 correcting the inaccurate, misleading, or incomplete information."

10. Effective April 20, 1978, section 208.8(e) is amended as follows:

SECTION 208.8—BANKING PRACTICES

(e) **Loans by State member banks in special flood-hazardous areas.**—(1) Property securing loan must be insured against flood. * * *

(2) Records of compliance. * * *

(3) (i) Notice of special flood hazards and availability of Federal disaster relief assistance. Each State member bank shall, as a condition of making, increasing, extending or renewing any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, mail or deliver as soon as feasible but not less than 10 days in advance of closing of the transaction (or not later than the bank's commitment, if any, if the period between commitment and closing is less than 10 days) a written notice to the borrower stating: (a) That the property securing the loan is or will be located in an area so identified, or in lieu of such notification a State member bank may obtain satisfactory written assurances from a seller or lessor stating that such sellor or lessor has notified the borrower, prior to the execution of any agreement for sale or lease, that the property securing the loan is or will be located in an area so identified: and (b) whether, in the event of damage to the property caused by flooding in a federally-declared disaster, Federal disaster relief assistance will be available for such property. Each State member bank shall require the borrower, prior to closing, to provide the bank with a written acknowledgment that the property securing the loan is or will be located in an area so identified and that the borrower has received the above-required notice regarding Federal disaster relief assistance.

(ii) Sample notices. A State member bank providing written notice containing the language presented in appendix A within the time limits prescribed in paragraph (a) of this section will be considered to be in compliance with the notice require-

ments of paragraph (a) of this section.

APPENDIX A—SAMPLE NOTICES

(1) Notice to Borrower of Special Flood-Hazards —Notice is hereby given to _____ that the improved real estate or mobile home described in the attached instrument is or will be located in an area designated by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. This area is delineated on _____'s Flood Insurance Rate Map ("FIRM") or, if the FIRM is unavailable, on the community's Flood Hazard Boundary Map ("FHBM"). This area has a 1 per cent chance of being flooded within any given year. The risk of exceeding the 1 per cent chance increases with time periods longer than 1 year. For example, during the life of a 30-year mortgage, a structure located in a special flood-hazardous area has a 26 per cent chance of being flooded.

(2) Notice to Borrower about Federal Disaster Relief Assistance—(a) Notice in participating communities. The improved real estate or mobile home securing your loan is or will be located in a community that is now participating in the National Flood Insurance program. In the event such property is damaged by flooding in a federally-declared disaster, Federal disaster relief assistance may be available. However, such assistance will be unavailable if your community has been identified as a special flood-hazardous area for one year or longer and is not participating in the National Flood Insurance program at the time assistance would be approved. This assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of your flood insurance.

(b) Notice in non-participating communities. The improved real estate or mobile home securing your loan is or will be located in a community that is not participating in the National Flood Insurance Program. This means that such property is not eligible for Federal flood insurance. In the event such property is damaged by flooding in a federally-declared disaster, Federal disaster relief assistance will be unavailable if your community has been identified as a special flood-hazardous area for 1 year or longer. Such assistance may be available only if at the time assistance would be approved your community is participating in the National Flood Insurance program or has been identified as a special flood-hazardous area for less than 1 year.

As an incident to this amendment, §§208.8 (e) (2) and (5) are revoked. Section 208.8 (e) (3) is renumbered §208.8 (e) (2). Section 208.8 (e) (4) is renumbered §208.8 (e) (3) and amended to include the provision of notice to borrowers of the availability of Federal relief assistance.

11. Effective January 1, 1980, section 208.8 is amended by adding paragraph (k) to read as follows:

SECTION 208.8—BANKING PRACTICES

* * * * *

(k) **Recordkeeping and confirmation of certain securities transactions effected by State member banks.**

(1) *Definitions*. For purposes of this paragraph (k):

(i) "customer" shall mean any person or account, including any agency, trust, estate, guardianship, committee or other fiduciary account, for which a State member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities which are the subject of the transactions:

(ii) "collective investment fund" means funds held by a State member bank as fiduciary and, consistent with local law, invested collectively (A) in a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act, or (B) in a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code;

(iii) a bank shall be deemed to exercise "investment discretion" with respect to an account if, directly or indirectly, the bank (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, or (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

(iv) "periodic plan" (including dividend reinvestment plans, automatic investment plans and employee stock purchase plans) means any written authorization for a State member bank acting as agent to purchase or sell for a customer a specific security or securities, in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them;

(v) "security" means any interest or instrument commonly known as a "security", whether in the

nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" does not include (A) a deposit or share account in a federally or state insured depository institution, (B) a loan participation, (C) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, (D) currency, (E) any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited, (F) units of a collective investment fund, (G) interests in a variable amount (master) note of a borrower of prime credit, or (H) U.S. Savings Bonds.

(2) *Recordkeeping*

Every State member bank effecting securities transactions for customers shall maintain the following records with respect to such transactions for at least three years:

(i) chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(ii) account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities.

(iii) a separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

(a) the account(s) for which the transaction was effected;

(b) whether the transaction was a market order, limit order, or subject to special instructions;

(c) the time the order was received by the trader or other bank employee responsible for effecting the transaction;

(d) the time the order was placed with the broker /dealer, or if there was no broker/dealer, the time the order was executed or cancelled;

(e) the price at which the order was executed; and

(f) the broker/dealer utilized;

(iv) a record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year.

Nothing contained in this subparagraph shall require a bank to maintain the records required by this rule in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information.

(3) *Form of Notification*

Every State member bank effecting a securities transaction for a customer shall maintain for at least three years and, except as provided in subparagraph (4), shall mail or otherwise furnish to such customer either of the following types of notifications:

(i) (a) a copy of the confirmation of a broker /dealer relating to the securities transaction; and (b) if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(ii) a written notification disclosing

(a) the name of the bank;

(b) the name of the customer;

(c) whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(d) the date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of such customer, and the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such a customer;

(e) the amount of any remuneration received or to be received, directly or indirectly, by any broker /dealer from such customer in connection with the transaction;

(f) the amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of U.S. Government securities, federal agency obligations and municipal obligations, this subparagraph (f) shall apply only with respect to remuneration received by the bank in an agency transaction; and

(g) the name of the broker/dealer utilized; or, where there is no broker/dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request.

(4) *Time of Notification*

The time for mailing or otherwise furnishing the

written notification described in subparagraph (3) shall be 5 business days from the date of the transaction, or if a broker/dealer is utilized, within 5 business days from the receipt by the bank of the broker/dealer's confirmation, but the bank may elect to use the following alternative procedures if the transaction is effected for:

(i) accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification within the above prescribed time period at no additional cost to the customer;

(ii) accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, mail or otherwise furnish to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information.

(iii) accounts, where the bank exercises investment discretion in an agency capacity, in which instance (a) the bank shall mail or otherwise furnish to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period, and (b) if requested by the customer, the bank shall mail or otherwise furnish to each such customer within a reasonable time the written notification described in subparagraph (3). The bank may charge a reasonable fee for providing the information described in subparagraph (3).

(iv) a collective investment fund, in which instance the bank shall at least annually furnish a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank.

(v) a periodic plan, in which instance the bank shall mail or otherwise furnish to the customer as promptly as possible after each transaction a written statement showing the funds and securities in the custody or possession of the bank, all service charges and commissions paid by the customer in connection with the transaction, and all other debits and credits of the customer's account involved in the transaction; provided that upon the written request of the customer the bank shall furnish the information described in subparagraph (3), except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in subparagraph (3).

(5) *Securities Trading Policies and Procedures*

Every State member bank effecting securities transactions for customers shall establish written policies and procedures providing:

(i) assignment of responsibility for supervision of all officers or employees who (a) transmit orders to or place orders with broker/dealers, or (b) execute transactions in securities for customers;

(ii) for the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(iii) where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(iv) that bank officers and employees who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate $10,000 or less during the calendar quarter. For purposes of this subparagraph (k)(iv), the term "securities" does not include U.S. government or federal agency obligations.

(6) *Exceptions*

The following exceptions to subparagraph (k) shall apply:

(i) the requirements of subparagraph (k)(2)(ii)

through (k)(2)(iv) and subparagraph (k)(5)(i) through (k)(5)(iii) shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in U.S. government and federal agency obligations:

(ii) activities of a State member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this paragraph (k); and

(iii) activities of foreign branches of a State member bank shall not be subject to the requirements of this paragraph (k).