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FEDERAL RESERVE BANK
OF NEW YORK

October 10, 1967

NOTICE OF PROPOSED RULE MAKING

Regulation F—Securities of Member State Banks

To State Member Banks in the Second Federal Reserve District:

The Board of Governors of the Federal Reserve System has proposed amendments to its Regulation F, "Securities of Member State Banks," that would add a definition of "beneficial ownership" and provide for inclusion of minority stockholder proposals in a bank's proxy soliciting material.

Printed below is an excerpt from the *Federal Register* of October 7, containing a copy of the notice of proposed rule making.

Comments on the proposed amendments should be submitted by November 6 and may be sent to the Board of Governors or to our Bank Examinations Department. Additional copies of this circular will be furnished upon request.

ALFRED HAYES,
President.

FEDERAL RESERVE SYSTEM
[12 CFR Part 206]

[Reg. F]

SECURITIES OF MEMBER STATE BANKS

Notice of Proposed Rule Making

The Board of Governors of the Federal Reserve System is considering the adoption of amendments to §§ 206.2 and 206.5 of this part (Regulation F). The proposed amendments would (a) add a definition of "beneficial ownership", (b) add a provision relating to inclusion of minority stockholder proposals in a bank's proxy soliciting material, and (c) make incidental changes in connection with the latter.

a. *Beneficial ownership.* The Board has noted a wide diversity in reporting of the ownership of bank stock held by family members of directors, officers, and principal stockholders ("insiders") of banks subject to Regulation F. This has occurred not only in stock-ownership reports required to be filed by insiders pursuant to section 16(a) of the Securities Exchange Act, but also in registra-

tion statements and proxy statements required to be filed by banks pursuant to sections 12 and 14 of the Act. Accordingly, in the interest of uniform disclosure by the banks and other persons subject to the regulation, the Board believes it necessary to adopt a definition of the term "beneficial ownership", as used throughout the regulation.

This would be accomplished by adding the following new paragraph to § 206.2:

(ff) The terms "beneficial ownership," "beneficially owned," and the like, when used with respect to the reporting of ownership of the bank's equity securities in any statement or report required by this part, shall include, in addition to direct and indirect beneficial ownership by the reporting person, ownership of such securities (1) by the spouse (except where legally separated) and minor children of such reporting person, and (2) by any other relative of the reporting person who has the same home as such person.

The principal effect of the proposed definition would be to require the reporting of shares owned by the spouse (except where legally separated) and minor children of every insider. Shares owned by any relative who lives in the same

home as the insider would also be required to be reported.

The proposed definition does not specify the only situations where ownership of shares held in the name of other parties should be reported. For example, certain trust interests should be reported (see § 206.6(d)), as should shares owned by a partnership or corporation in which the insider has a substantial interest. In addition, a person is regarded as the beneficial owner of securities held in the name of another person, if there exists a contract, understanding, relationship, or other arrangement that gives him benefits or powers substantially equivalent to those of ownership.

Also, the proposed definition is not intended to create a legal presumption for other purposes that the insider is, in fact, the beneficial owner of securities held by other persons—for example, with respect to tax consequences or forfeiture of short-swing trading profits under section 16(b) of the Securities Exchange Act. The reporting person is privileged by § 206.6(c) to disclaim beneficial ownership of such securities in ownership reports filed under section 16(a) of the

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Act, and the bank also may include such a disclaimer in its registration statement, proxy statements, and other reports. A final determination of the existence of beneficial ownership can be made, of course, only by a court of appropriate jurisdiction in the light of the facts of the particular case.

Adoption of the new definition would not impose any additional duties or liabilities with respect to reporting of transactions or holdings prior to its effective date. Prior reports will not be required to be amended.

b. *Minority stockholder proposals.* In the light of experience gained since this part was adopted in 1964, the Board of Governors believes that it would be in the public interest to adopt requirements relating to management presentation of minority stockholder proposals in a bank's proxy soliciting material.

This would be accomplished by adding the following new paragraph to § 206.5:

(k) *Proposals of security holders.* (1) If any security holder entitled to vote at a meeting of security holders of the bank shall submit to the management of the bank, within the time hereinafter specified, a proposal which is accompanied by notice of his intention to present the proposal for action at the meeting, the management shall set forth the proposal in its proxy statement and shall identify it in its form of proxy and provide means by which security holders can approve or disapprove the proposal. The management of the bank shall not be required by this section to include the proposal in its proxy statement for an annual meeting unless the proposal is submitted to management not less than 60 days in advance of a day corresponding to the first date on which the management's Statement was released to security holders in connection with the preceding annual meeting of security holders. A proposal to be presented at any other meeting shall be submitted to the management of the bank a reasonable time before the solicitation is made. This paragraph (k) shall not apply, however, to elections to office.

(2) If the management opposes the proposal, it shall also, at the written request of the security holder, include in the proxy statement (i) the name and address of the security holder, or a statement that such name and address will be furnished upon request, and (ii) a statement of the security holder (which shall not include such name and address) of not more than 100 words in support of the proposal. The statement and request of the security holder shall be furnished to the management at the same time that the proposal is furnished. Neither the management nor the bank shall be responsible for such statement.

(3) Notwithstanding subparagraphs (1) and (2) of this paragraph, the management may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(i) If the proposal is impossible to accomplish or, under applicable law, is not a proper subject for action by security

holders; or

(ii) If the proposal consists of a recommendation or request that the management take action with respect to a matter relating to the conduct of the ordinary business operations of the bank; or

(iii) If it appears that the proposal is submitted by the security holder principally for the purpose of enforcing a personal claim or redressing a personal grievance against the bank or its management, or principally for the purpose of promoting general economic, political, racial, religious, social, or similar causes; or

(iv) If the management has at the security holder's request included a proposal in its proxy statement and form of proxy relating to either of the two preceding annual meetings of security holders or any special meeting held subsequent to the earlier of such two annual meetings, and such security holder has failed without good cause to present the proposal, in person or by proxy, for action at the meeting; or

(v) If substantially the same proposal has previously been submitted to security holders in the management's proxy statement and form of proxy relating to any meeting of security holders held within the preceding 5 calendar years, it may be omitted from the proxy statement relating to any meeting of security holders held within the 3 calendar years after the latest such previous submission, provided that (a) if the proposal was submitted at only one meeting during such preceding period, it received less than 5 percent of the total number of votes cast in regard thereto, or (b) if the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than 10 percent of the total number of votes cast in regard thereto, or (c) if the proposal was submitted at three or more meetings during such period, it received at the time of its latest submission less than 20 percent of the total number of votes cast in regard thereto; or

(vi) If, prior to the receipt of such proposal, substantially the same proposal has been received by the management from another security holder and is to be included in the bank's proxy soliciting material.

(4) Whenever the management asserts that a proposal and any statement in support thereof may properly be omitted from the proxy statement and form of proxy, it shall file with the Board, not later than 20 days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (f)(1) of this section or such shorter period prior to such date as the Board may permit, a copy of the proposal and any statement in support thereof as received from the security holder, together with a statement of the reasons why the management deems such omission to be proper in the particular case, and, where such reasons are based on matters of law, a supporting opinion of counsel. The management shall at the same time, if it has not

already done so, notify the security holder submitting the proposal of its intention to omit the proposal from its proxy statement and shall forward to him a copy of the statement of the reasons why the management deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

c. *Incidental amendments.* As a result of the proposal with respect to minority stockholder proposals, § 206.5(d) (1) and (3) would be amended to read as follows:

(d) *Requirements as to proxy.* (1) The form of proxy (i) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the management of the bank, (ii) shall provide a specifically designated blank space for dating the proxy, and (iii) shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management or by security holders. No reference need be made, however, to proposals as to which discretionary authority is conferred pursuant to subparagraph (3) of this paragraph.

(3) A proxy may confer discretionary authority with respect to other matters that may come before the meeting, if (i) the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any such other matters are to be presented for action at the meeting and (ii) a specific statement to that effect, except with respect to proposals omitted pursuant to paragraph (k) of this section for which discretionary authority may also be conferred, is made in the proxy statement or form of proxy.

The Board believes that the new provisions will promote corporate democracy and, at the same time, protect bank management in its relationships with minority stockholders.

This notice is published pursuant to section 553(b) of Title 5, United States Code, and § 262.2(a) of the rules of procedure of the Board of Governors of the Federal Reserve System (12 CFR 262.2(a)).

To aid in the consideration of this matter by the Board, interested persons are invited to submit, in writing, relevant data, views, or arguments. Such material should be sent to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 6, 1967.

Dated at Washington, D.C., this 2d day of October 1967.

Board of Governors of the Federal Reserve System.

[SEAL] KENNETH A. KENYON,
Assistant Secretary.

[F.R. Doc. 67-11843; Filed, Oct. 6, 1967; 8:45 a.m.]