

*At Circ No. 8551*  
April 5, 1979

To the Addressee:

This Bank's letter, dated January 16, 1979, to State member banks in this District, entitled "Securities of Member State Banks -- Amendments to Regulation F To Conform With SEC Rules," indicated that copies of the revised Regulation F pamphlet would be sent to you when available.

Enclosed is a copy of Regulation F, as revised effective January 29, 1979. The new pamphlet replaces the December 1, 1975 printing of the regulation, together with the amendment thereto.

Revised forms and instructions for use in connection with the regulation may be obtained from our Regulations Division (Tel. No. 212-791-5914).

Circulars Division  
FEDERAL RESERVE BANK OF NEW YORK

*At Circ No. 855/*

**BOARD OF GOVERNORS**  
of the  
**FEDERAL RESERVE SYSTEM**

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**SECURITIES OF MEMBER STATE BANKS**

**REGULATION F**  
(12 CFR 206)

As revised effective January 29, 1979



**Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve district in which the inquiry arises.**

**Forms necessary for the preparation of statements and reports may be obtained from any Federal Reserve Bank.**

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## REGULATION F

(12 CFR 206)

As revised effective December 1, 1978

### SECURITIES OF MEMBER STATE BANKS

#### SECTION 206.1—SCOPE OF PART\*

This Part is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78) (the "Act") and applies to all securities subject to registration pursuant to section 12(b) or section 12(g) of the Act by a bank that is organized under State law and is a member of the Federal Reserve System ("bank").

#### SECTION 206.2—DEFINITIONS

For the purposes of this Part, including all forms and instructions promulgated for use in connection herewith, unless the context otherwise requires:

(a) The terms "exchange", "director", "person", "security", and "equity security" have the meanings given them in section 3(a) of the Act.<sup>1</sup>

(b) The term "affiliate" (whether referred to as an "affiliate" of, or a person "affiliated" with, a specified person) means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) The term "amount", when used with respect to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(d) The term "associate", when used to indicate a relationship with any person, means (1) any

corporation or organization (other than the bank or a majority-owned subsidiary of the bank) of which such person is an officer or partner or is, directly or indirectly, either alone or together with one or more members of his immediate family, the beneficial owner of 10 per cent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person, or who is a director or officer of the bank or any of its parents or subsidiaries.

(e) The term "charter" includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(f) The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(g) The term "employee" does not include a director, trustee, or officer.

(h) The term "equity capital accounts" means capital stock, surplus, undivided profits, and reserve for contingencies and other capital reserves.

(i) The term "fiscal year" means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(j) (1) For the purpose of determining whether the

\* This text corresponds to the Code of Federal Regulations, Title 12, Chapter II, Part 206, cited as 12 CFR 206. The words "this Part", as used herein, mean Regulation F.

<sup>1</sup> See Appendix, page 36.

registration requirements of section 12(g)(1) of the Act are applicable, securities shall be deemed to be "held of record" by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the bank, subject to the following:

(i) In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.

(ii) Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.

(iii) Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians, or in other fiduciary capacities with respect to a single trust, estate, or account shall be included as held of record by one person.

(iv) Securities held by two or more persons as co-owners shall be included as held by one person.

(v) Each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the bank can establish that, if such securities were registered, they would be held of record, under the provisions of this paragraph (j), by a lesser number of persons.

(vi) Securities registered in substantially similar names, where the bank has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

(2) Notwithstanding subparagraph (1):

(i) Securities held subject to a voting trust, deposit agreement, or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts, or similar evidences of interest in such securities; Provided, however, that the bank may rely in good faith on such information as is received in response to its request from a non-affiliated issuer of the certificates or interests.

(ii) If the bank knows or has reason to know that the form of holding securities of record is used principally to circumvent the provisions of section 12(g)(1) of the Act, the beneficial owners of such securities shall be deemed to be record owners thereof.

(k) The term "immediate family" includes a person's (1) spouse; (2) son, daughter, and de-

scendant of either; (3) father, mother, and ancestor of either; (4) stepson and stepdaughter; and (5) stepfather and stepmother. For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child shall be considered a child by blood.

(l) The term "information statement" means the statement required by § 206.5(a), whether or not contained in a single document.

(m) The term "last fiscal year" of bank means the last fiscal year of bank ending prior to the date of the meeting with respect to which an information statement is required to be distributed.

(n) The term "listed" means admitted to full trading privileges upon application by the bank and includes securities for which authority to add to the list on official notice of issuance has been granted.

(o) The term "majority-owned subsidiary" means a subsidiary more than 50 per cent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.

(p) The term "material", when used to qualify a requirement for furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before buying or selling the security registered.

(q) The term "officer" means a Chairman of the Board of Directors, Vice Chairman of the Board, Chairman of the Executive Committee, President, Vice President (except as indicated in the next sentence), Cashier, Treasurer, Secretary, Comptroller, and any other person who participates in major policy-making functions of the bank. In some banks (particularly banks with officers bearing titles such as Executive Vice President, Senior Vice President, or First Vice President as well as a number of "Vice Presidents"), some or all "Vice Presidents" do not participate in major policy-making functions, and such persons are not officers for the purpose of this Part.

(r) The term "option" means any option, warrant, or right other than those issued to security holders on a pro rata basis.

(s) The term "parent" of a specified person is a person controlling such person directly, or indirectly through one or more intermediaries.

(t) The term "plan" includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal document.

(u) The term "predecessor" means a person the major portion of the business and assets of which

another person acquired in a single succession or in a series of related successions.

(v) The terms **“previously filed”** and **“previously reported”** means previously filed with, or reported in, a registration statement under section 12, a report under section 13, or a definitive proxy statement or statement where management does not solicit proxies under section 14 of the Act, which statement or report has been filed with the Board, except that information contained in any such document shall be deemed to have been previously filed with or reported to an exchange only if such document is filed with such exchange.

(w) The term **“principal underwriter”** means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

(x) The term **“promoter”** includes: (1) any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, takes initiative in founding and organizing the bank; (2) any person who, in connection with the founding and organizing of the bank, directly or indirectly receives in consideration of services or property or both services and property 10 per cent or more of any class of securities of the bank or 10 per cent or more of the proceeds from the sale of any class of such securities. A person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not, however, be deemed a promoter if such person does not otherwise take part in founding and organizing the bank.

(y) The term **“proxy”** includes every proxy, consent, or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(z) The term **“proxy statement”** means the statement required by § 206.5(a), whether or not contained in a single document.

(aa) The terms **“qualified stock option”**, **“restricted stock option”**, and **“employee stock purchase plan”** have the meanings given them in sections 422 through 424 of the Internal Revenue Code of 1954, as amended. For the purposes of this regulation, an option which meets all of the conditions of section 424(b) of the Internal Revenue Code of 1954, as amended, other than the date of issuance shall be deemed to be a “restricted stock option”.

(bb) The term **“registration statement”** or **“statement”**, when used with reference to registration pursuant to § 206.4 of this Part, includes both an application for registration of securities on a national securities exchange pursuant to section 12(b)

of the Act and a registration statement filed pursuant to section 12(g) of the Act.

(cc) The term **“share”** means a share of stock in a corporation or unit of interest in an unincorporated person.

(dd) The term **“significant subsidiary”** means a subsidiary meeting any of the following conditions:

(1) The investments in the subsidiary by its parent plus the parent's proportion of the investments in such subsidiary by the parent's other subsidiaries, if any, exceed 5 per cent of the equity capital accounts of the bank. “Investments” refers to the amount carried on the books of the parent and other subsidiaries or the amount equivalent to the parent's proportionate share in the equity capital accounts of the subsidiary, whichever is greater.

(2) The parent's proportion of the gross operating revenues of the subsidiary exceeds 5 per cent of the gross operating revenues of the parent and its consolidated subsidiaries; or

(3) The parent's proportion of income of the subsidiary before income taxes exceeds 5 per cent or more of the income before income taxes of the parent and its consolidated subsidiaries, provided that if such income of the parent and its consolidated subsidiaries is at least 5 per cent lower than the average of such income for the last five fiscal years such average income may be substituted in the determination.

**NOTE:** The subsidiary may be the parent of one or more subsidiaries and, together with such subsidiaries may, if considered in the aggregate, constitute a significant subsidiary.

(ee) The terms **“solicit”** and **“solicitation”** mean (1) any request for a proxy whether or not accompanied by or included in a form of proxy; (2) any request to execute or not to execute, or to revoke, a proxy; or (3) the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. The terms do not apply, however, to the furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder, the performance by the bank of acts required by § 206.5(g), or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(ff) A **“subsidiary”** of a bank is (1) an affiliate controlled by the bank, directly or indirectly, through one or more intermediaries, except where the control (i) exists by reason of ownership or control of voting securities by the bank in a fiduciary capacity, or (ii) was obtained by the bank in the course of securing or collecting a debt previously

contracted in good faith, or (2) a person a majority of whose voting securities are held in trust for the benefit of the holders of a class of stock of the bank pro rata.

(gg) The term “**succession**” means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business unless followed by the direct acquisition of its shares or assets. The term “**succeed**” and “**successor**” have meanings correlative to the foregoing.

(hh) The term “**verified**”, when used with respect to financial statements, means either (1) certified by an independent public accountant, or (2) signed in accordance with § 206.7(b)(2) by the person principally responsible for the accounting records of the bank (the “principal accounting officer”) and by the person principally responsible for the audit procedures of the bank (the “auditor”); except that the term “verified” shall mean certified by an independent public accountant in any case in which the Board so informs the bank concerned, in writing, at least 90 days prior to the end of the fiscal year to which the financial statements will relate.

(ii) The term “**voting securities**” means securities the holders of which are presently entitled to vote for the election of directors.

(jj) 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.

#### SECTION 206.3—INSPECTION AND PUBLICATION OF INFORMATION FILED UNDER THE ACT

(a) **Filing of material with the Board.** All papers required to be filed with the Board pursuant to the Act or regulations thereunder shall be filed at its office in Washington, D.C. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers are actually received by the Board shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(b) **Inspection.** Except as provided in paragraph

(c) of this section all information filed, other than ownership reports required to be filed pursuant to § 206.6(a), regarding a security registered with the Board will be available for inspection at the Federal Deposit Insurance Corporation, 550 Seventeenth Street, N. W., Washington, D. C. In addition, copies of the registration statement and reports required by § 206.4 (exclusive of exhibits), the statements required by § 206.5(a), and the annual reports to security holders required by § 206.5(c), will be available for inspection at the New York, Chicago, and San Francisco Federal Reserve Banks and at the Reserve Bank of the district in which the bank filing the statements or reports is located. The ownership reports required to be filed pursuant to § 206.6(a) will be available for public inspection at the Board’s office in Washington, D. C.

(c) **Nondisclosure of certain information filed.** Any person filing any statement, report, or document under the Act may make written objection to the public disclosure of any information contained therein in accordance with the procedure set forth below:

(1) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that it desires to keep undisclosed (hereinafter called the confidential portion). In lieu thereof, it shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been so omitted and filed separately with the Board.

(2) The person shall file with the copies of the statement, report, or document filed with the Board:

(i) As many copies of the confidential portion, each clearly marked “CONFIDENTIAL TREATMENT”, as there are copies of the statement, report, or document filed with the Board and with each exchange, if any. Each copy shall contain the complete text of the item and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in case the confidential portion is part of a financial statement or schedule only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the statement, report, or document.

(ii) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain (a) an identification of the portion of the statement, report, or document that has been omitted, (b) a statement of the grounds of objection, and (c) the name of each exchange, if any, with which the

statement, report, or document is filed. The copies of the confidential portion and the application filed in accordance with this subparagraph shall be enclosed in a separate envelope marked "CONFIDENTIAL TREATMENT" and addressed to Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551.

(3) Pending the determination by the Board as to the objection filed in accordance with paragraph (c)(2) of this section, the confidential portion will not be disclosed by the Board.

(4) If the Board determines that the objection shall be sustained, a notation to that effect will be made at the appropriate place in the statement, report, or document.

(5) If the Board shall have determined that disclosure of the confidential portion is in the public interest, a finding and determination to that effect will be entered and notice of the finding and determination will be sent by registered or certified mail to the person.

(6) The confidential portion shall be made available to the public:

(i) upon the lapse of 15 days after the dispatch of notice by registered or certified mail of the finding and determination of the Board described in paragraph (c) (5) of this section, if prior to the lapse of such 15 days the person shall not have filed a written statement that he intends in good faith to seek judicial review of the finding and determination;

(ii) upon the lapse of 60 days after the dispatch of notice by registered or certified mail of the finding and determination of the Board, if the statement described in clause (i) shall have been filed and if a petition for judicial review shall not have been filed within such 60 days; or

(iii) if such petition for judicial review shall have been filed within such 60 days, upon final disposition, adverse to the person, of the judicial proceedings.

(7) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the statement, report, or document filed with the Board and with each exchange concerned.

#### SECTION 206.4—REGISTRATION STATEMENTS AND REPORTS

(a) **Requirement of registration statement.** Securities of a bank shall be registered under the provisions of either section 12(b) or section 12(g) of the Act by filing a statement in conformity with the requirements of Form F-1, Form F-1B (in the

case of registration of securities of a successor bank), (or Form F-10, in the case of registration of an additional class of securities). No registration shall be required under the provisions of section 12(b) or section 12(g) of the Act of any warrant or certificate evidencing a right to subscribe to or otherwise acquire a security of a bank if such warrant or certificate by its terms expires within 90 days after the issuance thereof.

(1) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of a bank, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another bank which is registered pursuant to section 12(g), the class of securities so issued shall be deemed to be registered pursuant to section 12(g) of the Act unless upon consummation of the succession such class is exempt from such registration or all securities of such class are held of record by less than 300 persons.

(2) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of a bank, which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another bank which is required to file a registration statement pursuant to section 12(g) but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the bank whose class of securities is so issued and such bank shall file a registration statement pursuant to section 12(g) of the Act with respect to such class within the period of time the predecessor bank would have been required to file such a statement, or within such extended period of time as the Board may authorize upon application pursuant to § 206.4(r), unless upon consummation of the succession such class is exempt from such registration or all securities of the class are held of record by less than 300 persons.

(b) **Registration effective as to class or series.** Depending upon whether the security is to be listed on an exchange, registration shall become effective as provided in section 12(d) or section 12(g)(1) of the Act as to the entire class of such security, then or thereafter authorized. If, however, a class of securities is issuable in two or more series with different terms, each such series shall be deemed a separate class for the purposes of this paragraph.

(c) **Acceleration of effectiveness of registration.** A request for acceleration of the effective date of registration shall be made in writing by either the bank, an exchange, or both and shall briefly describe the reasons therefor.



(d) **Exchange certification.** (1) Certification that a security has been approved by an exchange for listing and registration pursuant to section 12(d) of the Act shall be made by the governing committee or other corresponding authority of the exchange.

(2) The certification shall specify (i) the approval of the exchange for listing and registration; (ii) the title of the security so approved; (iii) the date of filing with the exchange of the registration statement and of any amendments thereto; and (iv) any conditions imposed on such certification. The exchange shall promptly notify the Board of the partial or complete satisfaction of any such conditions.

(3) The certification may be made by telegram but in such case shall be confirmed in writing. All certifications in writing and all amendments thereto shall be filed with the Board in duplicate and at least one copy shall be manually signed by the appropriate exchange authority.

(4) The date of receipt by the Board of the certification approving a security for listing and registration shall be the date on which the certification is actually received by the Board or the date on which the registration statement to which the certification relates is actually received by the Board, whichever date is later.

(5) If an amendment to the registration statement is filed with the exchange and with the Board after the receipt by the Board of the certification of the exchange approving the security for listing and registration, the certification, unless withdrawn, shall be deemed made with reference to the statement as amended.

(6) An exchange may, by notice to the Board, withdraw its certification prior to the time that the registration to which it relates first becomes effective pursuant to paragraph (b) of this section 206.4.

(7) An exchange may suspend from trading a bank security listed and registered thereon in accordance with its rules. Suspension of trading shall not terminate the registration of any bank security.

(e) **Requirement of annual reports.** (1) Every registrant bank shall file an annual report for each fiscal year after the last full fiscal year for which financial statements were filed with the registration statement. The report, which shall conform to the requirements of Form F-2, shall be filed within 90 days after the close of the fiscal year or within 30 days of the mailing of the bank's annual report to stockholders, whichever occurs first.

(2) Every bank which changes its fiscal closing date after the last fiscal year for which financial statements were filed in a Form F-1 or Form F-2 shall file a report on Form F-2 covering the re-

sulting interim period not more than 120 days after the close of the interim period or after the date of the determination to change the fiscal closing date, whichever is later. A separate report, however, need not be filed for any period of less than three months if the Form F-2 filed for the succeeding full fiscal year covers the interim period as well as the fiscal year. In such case, balance sheets need be furnished only as of the close of the entire period but all other financial statements and schedules shall be filed separately for both periods.

(f) **Annual reports of predecessors.** Every bank having securities registered pursuant to section 12 of the Act on Form F-1 (or Form F-10, in the case of registration of an additional class of securities) shall file an annual report pursuant to paragraph (e) of this section for each of its predecessors which had securities registered pursuant to section 12 covering the last full fiscal year of the predecessor prior to the registrant's succession, unless such report has been filed by the predecessor. Such annual report shall contain the information that would be required if filed by the predecessor.

(g) **Exception from requirement for annual report.** Notwithstanding paragraph (e) of this section 206.4, any bank that has filed, within the period prescribed for filing an annual report pursuant to that paragraph, a registration statement that has become effective and is not subject to any proceeding under section 15(c) or section 19(a) of the Act, or to an order thereunder, need not file an annual report if such statement covers the fiscal period that would be covered by such annual report and contains all of the information, including financial statements and exhibits, required for annual reports.

(h) **Current reports.** (1) Every registrant bank shall file a current report in conformity with the requirements of Form F-3 within the period specified in that form unless substantially the same information as that required by Form F-3 has been previously reported by the bank.

(2) Each bank having securities registered pursuant to section 12(g) of the Act, upon being notified by a national securities association registered pursuant to section 15A of the Act, that a class of the bank's securities is to be quoted on an interdealer quotation system which is sponsored and governed by the rules of such association, shall thereafter notify such association promptly of (i) any increase or decrease in the amount of securities of such class outstanding which exceeds 5 per cent of the amount of such class last reported to the association and (ii) any change in the name of the bank. The obligation to report pursuant to this paragraph (2) shall continue until notification is received from the asso-

ciation that all classes of securities are no longer quoted on such interdealer quotation system.

(3)(i) Any person who, after acquiring, directly or indirectly, the beneficial ownership of any equity security of a member State bank, of a class which is registered pursuant to section 12 of the Act, is directly or indirectly the beneficial owner of more than 5 per cent of such class shall, within ten days after such acquisition, send to the bank at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Board a statement containing the information required by Form F-11. Eight copies of the statement shall be filed with the Board.

(ii) Acquisition of securities by a security holder who, prior to such acquisition, was the beneficial owner of more than 5 per cent of the outstanding securities of the same class as those acquired shall be exempt from the reporting requirements of paragraph (h) (3) (i) of this section if the following conditions are met: (A) the acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain; (B) the purchaser does not, through the exercise of such preemptive subscription rights, acquire more than his or its pro rata share of the securities offered; and (C) the acquisition is duly reported pursuant to section 16(a) of the Act and the provisions of § 206.6 promulgated thereunder.

(4) If any material change occurs in the facts set forth in the statement required by paragraph (g)(2), the person who filed such statement shall promptly file with the Board and send to the bank and the exchange an amendment disclosing such change.

(5) In determining, for the purpose of § 206.4(h) or § 206.5(i), whether a person is directly or indirectly the beneficial owner of securities of any class, such person shall be deemed to be the beneficial owner of securities of such class which such person has the right to acquire through the exercise of presently exercisable options, warrants or rights or through the conversion of presently convertible securities, or otherwise. The securities subject to such options, warrants, rights or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person.

(i) **Quarterly reports.** Every registrant bank shall file a quarterly report in conformity with the requirements of Form F-4 for each fiscal quarter

ending after the close of the latest fiscal year for which financial statements were filed in a registration statement, except that no report need be filed for the fiscal quarter which coincides with the end of the fiscal year of the bank. Such reports shall be filed not later than 30 days after the end of such quarterly period, except that the report for any period ending prior to the date on which a class of securities of the bank first becomes effectively registered may be filed not later than 30 days after the effective date of such registration.

(j) **Additional information.** In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(k) **Information not available.** Information required need be given only insofar as it is known or reasonably available to the bank. If any required information is unknown and not reasonably available to the bank, either because the obtaining thereof would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of another person not affiliated with the bank, the information may be omitted, subject to the following conditions:

(1) The bank shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense together with the sources thereof, and

(2) The bank shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information. No such request need be made, however, to any foreign government, or an agency or instrumentality thereof, if, in the opinion of the bank, such request would be harmful to existing relationships.

(l) **Disclaimer of control.** If the existence of control is open to reasonable doubt in any instance, the bank may disclaim the existence of control and any admission thereof; in such case, however, the bank shall state the material facts pertinent to the possible existence of control.

(m) **Incorporation by reference.** (1) Matter contained in any part of a statement or report, other than exhibits, may be incorporated by reference in answer or partial answer to any item of a same statement or report. Matter contained in an exhibit may be so incorporated to the extent permitted in

paragraph (m) of this § 206.4. A registration statement for an additional class of securities of the bank may incorporate by reference any item contained in a previous registration statement or report.

(2) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear, or confusing.

(n) **Summaries or outlines of documents.** Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions. In addition to such statement, the summary or outline may incorporate by reference particular items, sections, or paragraphs of any exhibit and may be qualified in its entirety by such reference. Matter contained in an exhibit may be incorporated by reference in answer to an item only to the extent permitted by this paragraph (n).

(o) **Omission of substantially identical documents.** In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the bank need file a copy of only one of such documents, with a schedule identifying the documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Board may at any time in its discretion require the filing of copies of documents so omitted.

(p) **Additional exhibits.** The bank may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

(q) **Incorporation of exhibits by reference.** (1) Any document or part thereof previously filed with the Board pursuant to this Part may, subject to the following limitations, be incorporated by reference as an exhibit to any registration statement or report filed with the Board by the same or any other person. Any document or part thereof filed with an exchange pursuant to the Act may be incorporated by reference as an exhibit to any registration statement or report filed with the exchange by the same or any other person.

(2) Any document incorporated by reference pursuant to this paragraph (q) shall be so incorporated only by reference to the specific document and to the prior filing in which it was physically filed, not to another file which incorporates it by reference.

(3) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the bank shall file with the reference a statement containing the text of any such modification and the date thereof.

(4) No document which has been on file with the Board pursuant to this Part for a period of more than 10 years may be incorporated by reference. This limitation shall not, however, apply to a corporate charter or by-laws, if such document has not been amended more than twice since such filing.

(r) **Extension of time for furnishing information.** If the furnishing of any information, document, or report at the time it is required to be filed is impracticable, the bank may file with the Board as a separate document an application (1) identifying the information, document, or report in question, (2) stating why the filing thereof at the time required is impracticable, and (3) requesting an extension of time for filing the information, document, or report to a specified date not more than 60 days after the date it would otherwise have to be filed. The application shall be deemed granted unless the Board, within 15 days after receipt thereof, shall enter an order denying the application.

(i) If the extension requested pursuant to this paragraph is necessitated by the inability of any person other than the registrant to furnish any required opinion, information, report or verification, the application shall have attached as an exhibit, a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, information, report or verification.

(ii) If the application pursuant to this paragraph or the extension of time granted relates only to a portion of the required information, document or report, the registrant shall file the remaining portion, and the portion filed shall prominently indicate the nature of the omitted portion.

(s) **Number of copies; signatures; binding.** (1) Except where otherwise provided in a particular form, 8 copies of each registration statement and report (including financial statements) and 4 copies of each exhibit and each other document filed as a part thereof, shall be filed with the Board. At least one complete copy of each statement shall be filed with

each exchange, if any, on which the securities covered thereby are being registered. At least one copy of each report shall be filed with each exchange, if any, on which the bank has securities registered.

(2) At least one copy of each statement or report filed with the Board and one copy thereof filed with an exchange shall be manually signed. If the statement or report is typewritten, one of the signed copies filed with the Board shall be an original "ribbon" copy. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power or other authority shall also be filed with the statement or report.

(3) Each copy of a statement or report filed with the Board or with an exchange shall be bound in one or more parts. Copies filed with the Board shall be bound without stiff covers. The statement or report shall be bound on the left side in such a manner as to leave the reading matter legible.

(t) **Requirements as to paper, printing, and language.** (1) Statements and reports shall be filed on good quality, unglazed, white paper  $8\frac{1}{2}$  x 13 inches in size, insofar as practicable. Tables, charts, maps, and financial statements may, however, be on larger paper if folded to that size.

(2) The statement or report and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, photocopied, or typewritten. The statement or report or any portion thereof may, however, be prepared by any similar process that, in the opinion of the Board, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable, and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(3) The body of all printed statements and reports shall be in roman type at least as large as 10-point modern type. To the extent necessary for convenient presentation, however, financial statements and other statistical or tabular data and the notes thereto may be in type at least as large as 8-point modern type. All type shall be leaded at least 2 points.

(4) Statements and reports shall be in English. If any exhibit or other paper or document filed with a statement or report is in a foreign language, it shall be accompanied by a translation into English.

(u) **Preparation of statement or report.** Each statement and report shall contain the numbers and captions of all items of the appropriate form, but the text of the items may be omitted provided

the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto. Where any item requires information to be given in tabular form, however, it shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable, or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(v) **Riders; inserts.** Riders shall not be used. If the statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

(w) **Amendments.** All amendments shall comply with all pertinent requirements applicable to statements and reports. Amendments shall be filed separately for each separate statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective.

(x) **Title of securities.** Wherever the title of securities is required to be stated, information shall be given that will indicate the type and general character of the securities, including:

(1) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(2) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1970 to 1980"; if payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(3) In the case of any other kind of security, appropriate information of comparable character.

(y) **Interpretation of requirements.** Unless the context clearly shows otherwise,

(1) The forms require information only as to the bank.

(2) Whenever any fixed period of time in the past is indicated, such period shall be computed from the date of filing.

(3) Whenever words relate to the future, they have reference solely to present intention.

(4) Any words indicating the holder of a posi-

tion or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

(z) **When securities are deemed to be registered.** A class of securities with respect to which an application for registration or a registration statement has been filed pursuant to section 12 of the Act shall be deemed to be registered for the purposes of sections 13, 14, and 16 of the Act and this Part only when such application or registration statement has become effective as provided in section 12, and securities of said class shall not be subject to sections 13, 14, and 16 of the Act until such application or registration statement has become effective as provided in section 12.

#### SECTION 206.5—PROXY STATEMENTS AND OTHER SOLICITATIONS UNDER SECTION 14 OF THE ACT

(a) **Requirement of statement.** No solicitation of a proxy with respect to a security of a bank registered pursuant to section 12 of the Act shall be made unless each person solicited is concurrently furnished, or has previously been furnished, with a written proxy statement containing the information required by Form F-5. If the management of any bank having such a security outstanding fails to solicit proxies from the holders of any such security in such a manner as to require the furnishing of such a proxy statement, such bank shall transmit to all holders of record of such security a statement containing the information required by Form F-5. The "information statement" required by the preceding sentence shall be transmitted (i) at least 20 calendar days prior to any annual or other meeting of the holders of such security at which such holders are entitled to vote, or (ii) in the case of corporate action taken with the written authorization or consent of security holders, at least 20 days prior to the earliest date on which the corporate action may be taken. A proxy statement or an "information statement" required by this paragraph is hereinafter sometimes referred to as a "Statement".

(b) **Exceptions.** The requirements of the first sentence of paragraph (a) shall not apply to the following:

(1) Any solicitation made otherwise than on behalf of the management of the bank where the total number of persons solicited is not more than 10.

(2) Any solicitation by a person in respect to securities carried in his name or in the name of his nominee (otherwise than as voting trustee) or held in his custody, if such person

(i) receives no commission or remuneration for such solicitation, directly or indirectly, other than reimbursement of reasonable expenses;

(ii) furnishes promptly to the person solicited a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who will furnish copies thereof for such purpose and who will, if requested, defray the reasonable expenses to be incurred in forwarding such material; and

(iii) in addition, does no more than (a) impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or (b) impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date.

(3) Any solicitation by a person with respect to securities of which he is the beneficial owner.

(4) Any solicitation through the medium of a newspaper advertisement that informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy, and any other soliciting material and does no more than (i) name the bank; (ii) state the reason for the advertisement; and (iii) identify the proposal or proposals to be acted upon by security holders.

(c) **Annual report to security holders to accompany Statements.** (1) Any Statement furnished on behalf of the management of the bank that relates to an annual meeting of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders containing such financial statements for the last 2 fiscal years as will, in the opinion of the management, adequately reflect the financial position of the bank at the end of each such year and the results of its operations for each such year. The financial statements included in the annual report may omit details or summarize information if such statements, considered as a whole in the light of other information contained in the report and in the light of the financial statements of the bank filed or to be filed with the Board, will not by such procedure omit any material information necessary to a fair presentation or to make the financial statements not misleading under the circumstances. Subject to the foregoing requirements with respect to financial statements, the annual report to security holders may be in any form deemed suitable by the management and the information required by paragraphs (c)(1) (i) to (iv) of this paragraph may be presented in an appendix or other separate section of the re-

port, provided that the attention of security holders is called to such presentation.

(i) The report shall include a summary of the bank's operations containing the information required by Item 4 of Form F-2 except for the reconciliations, exhibits and supplemental information thereto.

(ii) The report shall contain a brief description of the operations done by the bank and its subsidiaries during the most recent fiscal year.

(iii) The report shall identify each of the bank's directors and officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

(iv) The report shall identify the principal market, if any, in which securities of any class entitled to vote at the meeting are traded, and shall state the high and low sales prices for such securities (or, in the absence of such information, the range of bid and asked quotation) and the dividends paid on such securities for each quarterly period during the bank's two most recent fiscal years. If bank securities are inactively traded, the report shall so state and shall indicate the range of sales prices known to management for the periods specified above and the source(s) of such information.

(2) Management's Statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited, on the written request of any such person, a copy of the bank's annual report on Form F-2 including the financial statements and the schedules thereto, required to be filed with the Board pursuant to § 206.4 of this Part for the bank's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, a bank need not undertake to furnish without charge copies of all exhibits to its Form F-2 provided that the copy of the annual report on Form F-2 furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the bank will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the bank's reasonable expenses in furnishing such exhibit.

**NOTE:** Pursuant to the undertaking required by the paragraph (c)(2) of this section, a bank shall furnish a copy of its annual report on Form F-2 to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the annual meeting of the bank's security holders, the person making the request was

a beneficial owner of securities entitled to vote at such meeting.

(3) If the bank knows that securities of any class entitled to vote at a meeting with respect to which the bank intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, bank, or voting trustee, or their nominees, the bank shall inquire of such record holder at least 10 days prior to the record date for the meeting of security holders (or at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown), whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such material to beneficial owners. The bank shall supply such record holder in a timely manner with additional copies in such quantities assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

(4) If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act, a bank shall make appropriate inquiry of the agency and thereafter of the participants in such agency who may hold on behalf of a beneficial owner, and shall comply with § 206.5(c)(3) with respect to any such participant.

**NOTES:** 1. To reflect adequately the financial position and results of operations of a bank in its annual report to security holders, the financial presentation shall include, but not necessarily be limited to, the following:

(a) Comparative statements of condition at the end of each of the last 2 fiscal years.

(b) Comparative statements of income in a form providing for the determination of "net income" for each fiscal year and per share earnings and dividend data.

(c) Comparative statements of changes in capital accounts for each fiscal year similar in form to Form F-9C.

(d) Comparative statements of changes in financial position for each fiscal year for which a statement of income is furnished.

(e) A comparative reconciliation of the "Allowance for Possible Loan Losses" account similar in form to Schedule VII, Form F-9D, and a comparative loan classification summary similar in form to Schedule III, of Form F-9D.

(f) Supplemental notes to financial statements to the extent necessary to furnish a fair financial presentation. Such notes should include the aggregate market value as at the balance sheet date for each category of investment securities reported on the balance sheet, and other information re-

quired to be furnished in notes to financial statements included in the bank's Form F-2 Annual Report.

2. The financial statements should be prepared on a consolidated basis to the extent required by § 206.7(d). Any differences from the principles of consolidation or other accounting principles or practices, or methods of applying accounting principles or practices, applicable to the financial statements of the bank filed or to be filed with the Board, which have a material effect on the financial position or results of operations of the bank, shall be noted and the effect thereof reconciled or explained in the financial statements or the notes thereto in the annual report to security holders.

3. When financial statements included in the annual report (Form F-2) filed, or proposed to be filed, with the Board are accompanied by an opinion of an independent public accountant, the financial statements in the annual report to security holders should also be accompanied by an opinion of such independent public accountant.

4. The requirement for sending an annual report to each person being solicited will be satisfied with respect to persons having the same address by sending at least one report to a holder of record at that address provided (i) that management has reasonable cause to believe that the record holder to whom the report is sent is the "beneficial owner" (see definition in § 206.2(jj)) of securities registered in the name of such person in other capacities or in the name of other persons at such address, or (ii) the security holders at such address consent thereto in writing. Nothing herein shall be deemed to relieve any person so consenting of any obligation to obtain or send such annual report to any other person.

(5) Eight copies of each annual report sent to security holders pursuant to this paragraph (c) shall be sent to the Board not later than (i) the date on which such report is first sent or given to security holders, or (ii) the date on which preliminary copies of the management Statement are filed with the Board pursuant to paragraph (f), whichever date is later. Such annual report is not deemed to be "soliciting material" or to be "filed" with the Board or otherwise subject to this § 206.5 or the liabilities of section 18 of the Act, except to the extent that the bank specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement by reference.

(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 paragraph (d)(4) of this section.

(2) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter or group of

related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified if the form of proxy states in bold-face type how the shares represented by the proxy are intended to be voted in each such case.

(3) A form of proxy which provides both for the election of directors and for action on other specified matters shall be prepared so as clearly to provide, by a box or otherwise, means by which the security holder may withhold authority to vote for the election of directors. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of directors shall be deemed to grant such authority, provided the form of proxy so states in bold-face type. This paragraph (3) does not apply (i) in the case of a merger, consolidation, or other plan if the election of directors is an integral part of the plan and is not to be separately voted upon or (ii) if the only matters to be acted upon are the election of directors and the election, selection, or approval of other persons such as clerks or auditors.

(4) A proxy may confer discretionary authority to vote with respect to any of the following matters:

(i) Matters that the persons making the solicitation do not know, within a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy;

(ii) Approval of the minutes of the prior meeting if such approval does not amount to ratification of the action taken at that meeting;

(iii) The election of any person to any office for which a bona fide nominee is named in the proxy statement and such nominee is unable to serve or for good cause refuses to serve;

(iv) Any proposal omitted from the proxy statement and form of proxy pursuant to § 206.5(k);

(v) Matters incident to the conduct of the meeting.

(5) No proxy shall confer authority (i) to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (ii) to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders. A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

(6) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the shares represented by the proxy will be voted and that where the person solicited specifies by means of a ballot provided pursuant to subparagraph (2) a choice with respect to any matters to be acted upon, the shares will be voted in accordance with the specifications so made.

(e) **Presentation of information in Statement.**

(1) The information included in the Statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items in the form need not be followed. Where practicable and appropriate, the information shall be presented in tabular form. All amounts shall be stated in figures. Information required by more than one applicable item need not be repeated. No statement need be made in response to any item that is inapplicable.

(2) Any information required to be included in the Statement as to terms of securities or other subject matter that from a standpoint of practical necessity must be determined in the future may be stated in terms of present knowledge and intention. To the extent practicable, the authority to be conferred concerning each such matter shall be confined within limits reasonably related to the need for discretionary authority. Subject to the foregoing, information that is not known to the persons on whose behalf the solicitation is to be made and is not reasonably within the power of such persons to ascertain or procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(3) There may be omitted from a proxy statement any information contained in any other proxy soliciting material that has been furnished to each person solicited in connection with the same meeting or subject matter if a clear reference is made to the particular document containing such information.

(4) All printed Statements shall be set in roman type at least as large as 10-point modern type except that, to the extent necessary for convenient presentation, financial statements and other statistical or tabular matter may be set in roman type at least as large as 8-point modern type. All type shall be leaded at least 2 points.

(5) All proxy statements shall disclose on the first page thereof the complete mailing address, including ZIP code, of the principal executive offices of bank and the approximate date on which

the proxy statement and form of proxy are first sent or given to security holders.

(f) **Material required to be filed.** (1) Three preliminary copies of each Statement, form of proxy, and other items of soliciting material to be furnished to security holders concurrently therewith, shall be filed with the Board by management or any other person making a solicitation subject to this § 206.5 at least 10 calendar days (or 15 calendar days in the case of other than routine meetings, as defined below) prior to the date such item is first sent or given to any security holders, or such shorter period prior to that date as may be authorized. For the purposes of this subparagraph (1), a routine meeting means a meeting with respect to which no one is soliciting proxies subject to this § 206.5 other than on behalf of management and at which management intends to present no matters other than the election of directors, election of inspectors of election, and other recurring matters. In the absence of actual knowledge to the contrary, management may assume that no other such solicitation of the bank's security holders is being made. In cases of annual meetings, one additional preliminary copy of the Statement, the form of proxy, and any other soliciting material, marked to show changes from the material sent or given to security holders with respect to the preceding annual meeting, shall be filed with the Board.

(2) Three preliminary copies of any additional soliciting material, relating to the same meeting or subject matter, furnished to security holders subsequent to the proxy statement shall be filed with the Board at least two days (exclusive of Saturdays, Sundays, and holidays) prior to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as may be authorized upon a showing of good cause therefor.

(3) Eight copies of each Statement, form of proxy, and other items of soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Board not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each exchange upon which any security of the bank is listed.

**NOTE:** The definitive material filed with the Board should be accompanied by a letter over the signature of an officer of bank or its counsel indicating any material changes which have been made therein, other than those made in response to the staff's comments.

(4) If the solicitation is to be made in whole or in part by personal solicitation, three copies of all



written instructions or other material that discusses or reviews, or comments upon the merits of, any matter to be acted upon, and is furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation, shall be filed with the Board by the person on whose behalf the solicitation is made at least five days prior to the date copies of such material are first sent or given to such individuals, or such shorter period prior to that date as may be authorized upon a showing of good cause therefor.

(5) All copies of material filed pursuant to paragraph (1) or (2) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the Board only and shall not be deemed available for public inspection before definitive material has been filed with the Board except that such material may be disclosed to any department or agency of the United States Government and to the Congress and the Board may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Board. All material filed pursuant to paragraph (f)(1), (2), or (3) of this section shall be accompanied by a statement of the date on which definitive material filed pursuant to paragraph (f)(3) of this section is intended to be, or has been, released to security holders. All material filed pursuant to paragraph (f)(4) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individuals who will make the actual solicitation.

(6) Copies of replies to inquiries from security holders requesting further information and copies of communications that do no more than request that forms of proxy theretofore solicited be signed, dated, and returned need not be filed pursuant to this paragraph (f).

(7) Notwithstanding the provisions of paragraphs (f)(1), (f)(2), and (i)(5), copies of soliciting material in the form of speeches, press releases, and radio or television scripts may, but need not, be filed with the Board prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the Board as required by paragraph (f)(3) not later than the date such material is used or published. The provision of paragraphs (f)(1), (f)(2), and (i)(5) shall apply, however, to any reprints or reproductions of all or any part of such material.

(8) Where any Statement, form of proxy, or other material filed pursuant to this paragraph (f) is revised, two of the copies of such revised material filed pursuant to paragraph (f)(3) shall be marked to indicate clearly the changes. If the revision alters the

text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(9) The date that proxy material is "filed" with the Board for purposes of subparagraphs (1), (2), and (4) of this paragraph is the date of receipt of the material by the Board, not the date of mailing to the Board. In computing the advance filing period for preliminary copies of proxy soliciting material referred to in such subparagraphs, the filing date of the preliminary material is to be counted as the first day of the period and definitive material should not be planned to be mailed or distributed to security holders until after the expiration of such period. Where additional time is required for final printing after receipt of comments, the preliminary proxy material should be filed as early as possible prior to the intended mailing date.

(10) Where preliminary copies of material are filed with the Board pursuant to this subsection, the printing of definitive copies for distribution to security holders should be deferred until the comments of the Board's staff have been received and considered.

**(g) Mailing communications for security holders.** If the management of the bank has made or intends to make any proxy solicitation subject to this § 206.5, the bank shall perform such of the following acts as may be requested in writing with respect to the same subject matter or meeting by any security holder who is entitled to vote on such matter or to vote at such meeting and who shall first defray the reasonable expenses to be incurred by the bank in the performance of the act or acts requested:

(1) The bank shall mail or otherwise furnish to such security holder the following information as promptly as practicable after the receipt of such request:

(i) A statement of the approximate number of holders of record of any class of securities, any of the holders of which have been or are to be solicited on behalf of the management, or any group of such holders that the security holder shall designate;

(ii) If the management of the bank has made or intends to make, through bankers, brokers, or other persons, any solicitation of the beneficial owners of securities of any class, a statement of the approximate number of such beneficial owners, or any group of such owners that the security holder shall designate;

(iii) An estimate of the cost of mailing a specified proxy statement, form of proxy, or other communication to such holders, including insofar as known or reasonably available, the estimated

handling and mailing costs of the bankers, brokers, or other persons specified in paragraph (g)(1)(ii) of this section.

(2)(i) Copies of any proxy statement, form of proxy, or other communication furnished by the security holder shall be mailed by the bank to such of the holders of record specified in paragraph (g)(1)(i) of this section as the security holder shall designate. The bank shall also mail to each banker, broker, or other persons specified in paragraph (g)(1)(ii) of this section, a sufficient number of copies of such proxy statement, form of proxy, or other communication as will enable the banker, broker, or other person to furnish a copy thereof to each beneficial owner solicited or to be solicited through him;

(ii) Any such material that is furnished by the security holder shall be mailed with reasonable promptness by the bank after receipt of a tender of the material to be mailed, of envelopes or other containers therefor, of postage or payment for postage, and of evidence that such material has been filed with the Board pursuant to paragraph (f). The bank need not, however, mail any such material that relates to any matter to be acted upon at an annual meeting of security holders prior to the earlier of (a) a day corresponding to the first date on which management proxy soliciting material was released to security holders in connection with the last annual meeting of security holders, or (b) the first day on which solicitation is made on behalf of management. With respect to any such material that relates to any matter to be acted upon by security holders otherwise than at an annual meeting, such material need not be mailed prior to the first day on which solicitation is made on behalf of management;

(iii) Neither the management nor the bank shall be responsible for such proxy statement, form of proxy, or other communication.

(3) In lieu of performing the acts specified above, the bank may, at its option, furnish promptly to such security holder a reasonably current list of the names and addresses of such of the holders of record specified in paragraph (g)(1)(i) of this section as the security holder shall designate, and a list of the names and addresses of the bankers, brokers, or other persons specified in paragraph (g)(1)(ii) of this section as the security holder shall designate together with a statement of the approximate number of beneficial owners solicited or to be solicited through each such banker, broker, or other person and a schedule of the handling and mailing costs of each such banker, broker, or other person, if such schedule has been supplied to the management of the bank.

The foregoing information shall be furnished promptly upon the request of the security holder or at daily or other reasonable intervals as it becomes available to the management of the bank.

(h) **False or misleading statements.** (1) No solicitation or communication subject to this section shall be made by means of any Statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has become false or misleading. Depending upon particular circumstances, the following may be misleading within the meaning of this paragraph: predictions as to specific future market values, earnings, or dividends; material that directly or indirectly impugns character, integrity, or personal reputation, or directly or indirectly makes charges concerning improper, illegal, or immoral conduct or associations, without factual foundation; failure so to identify a Statement, form of proxy, and other soliciting material as clearly to distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter; claims made prior to a meeting regarding the results of a solicitation.

(2) The fact that a proxy statement, form of proxy, or other soliciting material has been filed with or reviewed by the Board or its staff shall not be deemed a finding by the Board that such material is accurate or complete or not false or misleading, or that the Board has passed upon the merits of or approved any statement therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(i) **Special provisions applicable to election contests.**

(1) **Solicitations to which this paragraph applies.** This paragraph (i) applies to any solicitation subject to this § 206.5 by any person or group of persons for the purpose of opposing a solicitation subject to this section by any other person or group of persons with respect to the election or removal of directors at any annual or special meeting of security holders.

(2) **Participant defined.**

(i) For purposes of this paragraph (i) the terms "participant" and "participant in a solicitation" include the following:

(a) the bank;

(b) any director of the bank, and any nominee for whose election as a director proxies are solicited;

(c) any committee or group that solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly, takes the initiative in organizing, directing, or financing any such committee or group;

(d) any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than \$500 and who are not otherwise participants;

(e) any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding, or voting of securities of the bank by any participant or other person, in support of or in opposition to a participant, except a member or nonmember bank, broker, or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and

(f) any other person who solicits proxies.

(ii) Such terms do not include:

(a) any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the performance of his or its duties in the course of such retention or employment, or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;

(b) any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations, or financial adviser, and whose activities are limited to the performance of his duties in the course of such employment;

(c) any person regularly employed as an officer or employee of the bank or any of its subsidiaries who is not otherwise a participant; or

(d) any officer or director of, or any person regularly employed by, any other participant, if such officer, director, or employee is not otherwise a participant.

(3) **Filing of information required by Form F-6.**

(i) No solicitation subject to this paragraph (i) shall be made by any person other than the management of the bank unless at least five business days prior thereto, or such shorter period as the Board may authorize upon a showing of good cause therefor, there has been filed with the Board and with each

exchange upon which any security of the bank is listed, by or on behalf of each participant in such solicitation, a statement in duplicate containing the information specified by Form F-6.

(ii) Within five business days after a solicitation subject to this paragraph (i) is made by the management of the bank, or such longer period as the Board may authorize upon a showing of good cause therefor, there shall be filed with the Board and with each exchange upon which any security of the bank is listed, by or on behalf of each participant in such solicitation, other than the bank, a statement in duplicate containing the information specified by Form F-6.

(iii) If any solicitation on behalf of management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this paragraph (i) in opposition thereto, a statement in duplicate containing the information specified in Form F-6 shall be filed by or on behalf of each participant in such prior solicitation, other than the bank, as soon as reasonably practicable after the commencement of the solicitation in opposition thereto, with the Board and with each exchange on which any security of the bank is listed.

(iv) If, subsequent to the filing of the statements required by subparagraphs (i), (ii), and (iii) above, additional persons become participants in a solicitation subject to this paragraph (i), there shall be filed, with the Board and each appropriate exchange, by or on behalf of each such person a statement in duplicate containing the information specified by Form F-6, within three business days after such person becomes a participant, or such longer period as the Board may authorize upon a showing of good cause therefor.

(v) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to such statement shall be filed promptly with the Board and each appropriate exchange.

(vi) Each statement and amendment thereto filed pursuant to this paragraph (i) shall be part of the official public files of the Board and shall be deemed a communication subject to the provisions of paragraph (h) of this § 206.5.

(4) **Solicitations prior to furnishing required Statement.** Notwithstanding the provisions of § 206.5(a), a solicitation subject to this paragraph (i) of this section may be made prior to furnishing security holders a written Statement containing the information specified in Form F-5 with respect to such solicitations if (i) the statements required by

paragraph (3) of this paragraph (i) are filed by or on behalf of each participant in such solicitation; (ii) no form of proxy is furnished to security holders prior to the time the Statement is furnished to security holders, except that paragraph (i)(4)(ii) of this section shall not apply where a Statement then meeting the requirements of Form F-5 has been furnished to security holders by or on behalf of the person making the solicitation; (iii) at least the information specified in Items 2(a) and 3(a) of the statement required by paragraph (i)(3) of this section to be filed by each participant, or an appropriate summary thereof, is included in each communication sent or given to security holders in connection with the solicitation; and (iv) a written Statement containing the information specified in Form F-5 with respect to a solicitation is sent or given security holders at the earliest practicable date.

(5) **Solicitations prior to furnishing required Statement—filing requirements.** Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the proxy statement required by § 206.5(a) shall be filed with the Board in preliminary form, at least five business days prior to the date copies of such material are first sent or given to security holders, or such shorter period as the Board may authorize upon a showing of good cause therefor.

(6) **Application of this paragraph to annual report.** Notwithstanding the provisions of § 206.5(c), three copies of any portion of the annual report referred to in that paragraph that comments upon or refers to any solicitation subject to this paragraph (i), or to any participant in any such solicitation, other than the solicitation by the management, shall be filed with the Board as proxy material subject to this § 206.5. Such portion of the annual report shall be filed with the Board in preliminary form at least five business days prior to the date copies of the report are first sent or given to security holders.

(7) **Application of paragraph (f).** The provisions of subparagraphs (3), (4), (5), (6), and (7) of paragraph (f) of this § 206.5 shall apply, to the extent pertinent, to soliciting material subject to subparagraphs (5) and (6) of this paragraph (i).

(8) **Use of reprints or reproductions.** In any solicitation subject to this paragraph (i), soliciting material that includes, in whole or in part, any reprints or reproductions of any previously published material shall:

(i) state the name of the author and publication, the date of prior publication, and identify any person who is quoted without being named in the previously published material.

(ii) except in the case of a public official document or statement, state whether or not the consent of the author and publication has been obtained to the use of the previously published material as proxy soliciting material.

(iii) if any participant using the previously published material, or anyone on his behalf, paid, directly or indirectly, for the preparation or prior publication of the previously published material, or has made or proposes to make any payments or give any other consideration in connection with the publication or republication of such material, state the circumstances.

(j) **Prohibition of certain solicitations.** No person making a solicitation that is subject to this § 206.5 shall solicit (1) any undated or postdated proxy; or (2) any proxy that provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

(k) **Proposals of security holders.** (1) If any security holder of an issuer notifies the management of the issuer of his intention to present a proposal for action at a forthcoming meeting of the issuer's security holders, the management shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by § 206.5(d)(2). If management issues an information statement pursuant to paragraph (a) of this section, it shall identify the proposal and indicate the disposition proposed to be made of the proposal by the management at the meeting. Management, however, need not include a proposal in its information statement if such proposal is submitted less than 60 days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders. Notwithstanding the foregoing, the management shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the "proponent") has complied with the requirements of this paragraph and paragraphs (k)(2) and (3) of this section:

(i) **Eligibility.** At the time he submits the proposal, the proponent shall be a record or beneficial owner of a security entitled to be voted at the meeting on his proposal, and he shall continue to own such security through the date on which the meeting is held. If the management requests documentary support for a proponent's claim that he is a beneficial owner of a voting security of the issuer, the proponent shall furnish appropriate documentation within 10 business days after receiving the request. In the event the management includes the propo-

nent's proposal in its proxy soliciting materials for the meeting and the proponent fails to comply with the requirement that he continuously be a voting security holder through the meeting date, the management shall not be required to include any proposal submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(ii) **Notice.** The proponent shall notify the management in writing of his intention to appear personally at the meeting to present his proposal for action. The proponent shall furnish the requisite notice at the time he submits the proposal, except that if he was unaware of the notice requirement at that time he shall comply with it within 10 business days after being informed of it by the management. If the proponent, after furnishing in good faith the notice required by this provision, subsequently determines that he will be unable to appear personally at the meeting, he shall arrange to have another security holder of the issuer present his proposal on his behalf at the meeting. In the event the proponent or his proxy fails, without good cause, to present the proposal for action at the meeting, the management shall not be required to include any proposals submitted by the proponent in its proxy soliciting materials for any meeting held in the following two calendar years.

(iii) **Timeliness.** The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the management within the following time periods:

(A) **Annual Meetings.** A proposal to be presented at an annual meeting shall be received by the management at the issuer's principal executive offices not less than 90 days in advance of a date corresponding to the date set forth on the management's proxy statement released to security holders in connection with the previous year's annual meeting of security holders, except that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date of the previous year's annual meeting a proposal shall be received by the management a reasonable time before the solicitation is made.

(B) **Other meetings.** A proposal to be present at any meeting other than an annual meeting shall be received at a reasonable time before the solicitation is made.

**NOTE:** In order to curtail controversy as to the date on which a proposal was received by the management, it is suggested that proponents submit their proposals by Certified Mail-Return Receipt Requested.

(iv) **Number and length of proposals.** The proponent may submit a maximum of two proposals of not more than 300 words each for inclusions in the management's proxy materials for a meeting of security holders. If the proponent fails to comply with either of these requirements, or if he fails to comply with the 200-word limit on supporting statements mentioned in paragraph (k)(2) of this section, he shall be provided the opportunity by the management to reduce, within 10 business days, the items submitted by him to the limits required by this rule.

(2) If the management opposes any proposal received from a proponent, it shall also, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than 200 words in support of the proposal, which statement shall not include the name and address of the proponent. The statement and request of the proponent shall be furnished to the management at the time that the proposal is furnished, and neither the management nor the issuer shall be responsible for such statement. The proxy statement shall also include either the name and address of the proponent or a statement that such information will be furnished by the issuer or by the Board to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor. If the name and address of the proponent are omitted from the proxy statement, they shall be furnished to the Board at the time of filing the management's preliminary proxy material pursuant to § 206.5(f)(1).

(3) 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, under the laws of the issuer's domicile, not a proper subject for action by security holders;

**NOTE:** A proposal that may be improper under the applicable State law when framed as a mandate or directive may be proper when framed as a recommendation or request.

(ii) If the proposal would, if implemented, require the issuer to violate any State law or Federal law of the United States, or any law of any foreign jurisdiction, to which the issuer is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any State law or Federal law of the United States;

(iii) If the proposal or the supporting statement is contrary to any of the Board's proxy rules and regulations, including § 206.5(h) which prohibits

false or misleading statements in proxy soliciting materials;

(iv) If the proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management, or any other person;

(v) If the proposal deals with a matter that is not significantly related to the issuer's business;

(vi) If the proposal deals with a matter that is beyond the issuer's power to effectuate;

(vii) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the issuer;

(viii) If the proposal relates to an election to office;

(ix) If the proposal is counter to a proposal to be submitted by the management at the meeting;

(x) If the proposal has been rendered moot;

(xi) If the proposal is substantially duplicative of a proposal previously submitted to the management by another proponent, which proposal will be included in the management's proxy materials for the meeting;

(xii) 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 annual or special meeting of security holders held within the preceding five calendar years, it may be omitted from the management's proxy materials relating to any meeting of security holders held within three 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 3 per cent 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 6 per cent of the total number of votes cast in regard thereto; or

*(C)* If the proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less than 10 per cent of the total number of votes cast in regard thereto; and

(xiii) If the proposal relates to specific amounts of cash or stock dividends.

(4) Whenever the management asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Board, not later than 50 days

prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to § 206.5(f)(1), or such shorter period prior to such date as the Board or its staff may permit, five copies of the following items: (i) The proposal; (ii) any statement in support thereof as received from the proponent; (iii) a statement of the reasons why the management deems such omission to be proper in the particular case; and (iv) 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 proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the management deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(1) **Invitations for tenders.** (1) No person, directly or indirectly, by use of the mails or any means or instrumentality of inter-State commerce or of any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of the Act of any member State bank, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security holders, such person has filed with the Board a statement containing the information and exhibits required by Form F-13.

(2) If any material change occurs in the facts set forth in the statement required by subparagraph (1), the person who filed such statement shall promptly file with the Board an amendment disclosing such change.

(3) All tender offers for, or requests or invitations for tenders of, securities published or sent or given to the holders of such securities shall include the following information:

(i) The name of the person making the tender offer, request or invitation;

(ii) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d)(5) of the Act, or otherwise;

(iii) If the tender offer or request or invitation for tenders is for less than all of the outstanding securities of the class and the person making the offer, request or invitation is not obligated to purchase all of the securities tendered, the date of expiration of the period during which the securities

will be taken up pro rata pursuant to section 14(d)(6) of the Act, or otherwise; and

(iv) The information required by Items 1(c), 2(b), 2(e), 2(f), and 2(g), 3, 4, 5, 6, 7, 8, 9, and 10 of Form F-13 or a fair and adequate summary thereof.

Instructions. 1. Negative responses to any such item or subitem of Form F-13 need not be included in the information published or sent or given to security holders.

2. If the information required by Item 9 of Form F-13 is summarized, appropriate instructions should be included stating how more complete financial information can be obtained.

(4) Any additional material soliciting or requesting such tender offer subsequent to the initial solicitation or request shall contain the name of the persons making such solicitation or request and the information required by Items 1(c), 2(b), 2(e), 2(f), and 2(g), 3, 4, 5, 6, 7, 8, 9, and 10 of Form F-13, or a fair and adequate summary thereof; *Provided, however,* That such material may omit any of such information previously furnished to the persons solicited or requested for tender offers. Copies of such additional material soliciting or requesting such tender offers shall be filed with the Board not later than the time copies of such material are first published or sent or given to security holders.

(5) If any securities to be offered in connection with the tender offer for, or request or invitation for tenders of, securities with respect to which a statement is required to be filed pursuant to paragraph (1) of this section, have been or are to be registered under the Securities Act of 1933, a copy of the prospectus containing the information required to be included therein under that Act shall be filed as an exhibit to such statement. Any information contained in the prospectus may be incorporated by reference in such statement.

(6) When a person makes a tender offer for, or request or invitation for tenders of, any class of equity securities of a bank registered pursuant to section 12 of the Act, and such person has filed a statement with the Board pursuant to this section, any other person controlling, controlled by, or under common control ("control person") with the issuing bank which bank is prohibited by R.S. 5201 (12 U.S.C. 83) from purchasing, with certain exceptions, shares of its own capital stock shall not thereafter, during the period such tender offer, request or invitation continues, purchase any class of equity securities of the issuing bank unless:

(i) The control person has filed with the Board a statement containing the information specified

below with respect to proposed purchases;

(A) The title and amount of equity securities to be purchased, the names of the persons or classes of persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(B) The purpose for which the purchase is to be made and any plan or proposal for the disposition of such securities; and

(C) The source and amounts of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto.

(ii) The control person has at any time within the past six months sent or given to the equity security holders of the issuing bank the substance of the information contained in the statement required by subparagraph (1)(6)(i) of this section.

(7) Ten copies of the statement required by paragraph (1), every amendment to such statement and all other material required by this rule and such statement shall be filed with the Board.

(8) Certain communications. The following communications shall not be deemed to be requests or invitations for tenders:

(i) Offers to purchase securities made in connection with a distribution of securities permitted by Rules 10b-6, 10b-7, and 10b-8 under the Act as promulgated by the Securities and Exchange Commission (17 CFR §§ 240.10b-6, 10b-7, and 10b-8).

(ii) The call or redemption of any security in accordance with the terms and conditions of the governing instruments.

(iii) Offers to purchase securities evidenced by a script certificate, order form or similar document which represents a fractional interest in a share of stock or similar security.

(iv) Offers to purchase securities pursuant to a statutory procedure for the purchase of dissenting shareholders' securities.

(v) The furnishing of information and advice regarding a tender offer to customers or clients by attorneys, member or nonmember banks, brokers, fiduciaries or investment advisers, who are not otherwise participating in the tender offer or solicitation, on the unsolicited request of a person or pursuant to a general contract for advice to the person to whom the information or advice is given.

(vi) A communication from a bank to its security holders which does no more than (1) identify a tender offer or request or invitation for tenders made by another person, (2) state that the management of the bank is studying the matter and will, on or before a specified date (which shall be not later than 10 days prior to the date specified in the offer, request or invitation, as the last date on which tenders will be accepted, or such shorter periods as the Board may authorize) advise security holders as to the management's recommendation to accept or reject the offer, request or invitation, and (3) request security holders to defer making a determination as to whether or not they should accept or reject the offer, request or invitation until they have received the management's recommendation with respect thereto.

(m) **Recommendations as to tender offers.** (1) No solicitation or recommendation to the holders of a security to accept or reject a tender offer or request or invitation for tenders subject to section 14(d) of the Act shall be made unless, at the time copies of the solicitation or recommendation are first published or sent or given to holders of the security, the person making such solicitation or recommendation has filed with the Board a statement containing the information specified by Form F-12: *Provided, however,* That this paragraph shall not apply to (i) a person required by § 206.5(l) to file a statement, or (ii) a person, other than the bank or the management of the bank, who makes no written solicitations or recommendations other than solicitations or recommendations copies of which have otherwise been filed with the Board.

(2) If any material change occurs in the facts set forth in the statement required by subparagraph (1), the person who filed such statement shall promptly file with the Board an amendment disclosing such change.

(3) Any written solicitation or recommendation to the holders of a security to accept or reject a tender offer or request or invitation for tenders subject to section 14(d) of the Act shall include the name of the person making such solicitation or recommendation and the information required by Items 1(b) and 2(b) of Form F-12, or a fair and adequate summary thereof: *Provided, however,* That such written solicitation or recommendation may omit any of such information previously furnished to the persons to whom the solicitation or recommendation is made.

(n) **Change in majority of directors.** If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transac-

tion subject to section 13(d) or 14(d) of the Act, any persons are to be elected or designated as directors of the bank, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the bank, then, not less than 10 days prior to the date any such person takes office as a director, or such shorter period prior to that date as the Board may authorize upon a showing of good cause therefor, the bank shall file with the Board and transmit to all holders of record of securities of the bank who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by Items 5(a), (d), (e) and (f), 6 and 7 of Form F-5 to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

(o) **Solicitation prior to furnishing required proxy statement.** (1) Notwithstanding the provisions of § 206.5(a), a solicitation (other than one subject to § 206.5(i)) may be made prior to furnishing security holders a written proxy statement containing the information specified in Form F-5 with respect to such solicitation if—

(i) The solicitation is made in opposition to a prior solicitation or an invitation for tenders or other publicized activity, which if successful, could reasonably have the effect of defeating the action proposed to be taken at the meeting;

(ii) No form of proxy is furnished to security holders prior to the time the written proxy statement required by § 206.5(a) is furnished to security holders: *Provided, however,* That this subparagraph (ii) shall not apply where a proxy statement then meeting the requirements of Form F-5 has been furnished to security holders by or on behalf of the person making the solicitation;

(iii) The identity of the person or persons by or on whose behalf the solicitation is made and a description of their interests, direct or indirect, by security holdings or otherwise, are set forth in each communication sent or given to security holders in connection with the solicitation; and

(iv) A written proxy statement meeting the requirements of this section is sent or given to security holders at the earliest practicable date.

(2) Three copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by § 206.5(a) shall be filed with the Board in preliminary form at least 5 business days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period as may be authorized.



SECTION 206.6—"INSIDERS'"  
SECURITIES TRANSACTIONS AND  
REPORTS UNDER SECTION 16  
OF THE ACT

(a) **Filing of statements by directors, officers, and principal stockholders.** (1) Initial statements of beneficial ownership of equity securities of a bank required by section 16(a) of the Act, and statements of changes in such beneficial ownership, shall be prepared and filed in accordance with the requirements of Form F-7 and Form F-8, respectively.

(2) A person who is already filing statements with the Board pursuant to section 16(a) need not file an additional statement on Form F-7 when an additional class of equity securities of the same bank becomes registered or when he assumes another or an additional relationship to the bank; for example, when an officer becomes a director.

(3) Any bank that has equity securities listed on more than one national securities exchange may designate one of them as the only exchange with which reports pursuant to section 16(a) need be filed. Such designation shall be filed with the Board and with each national securities exchange on which any equity security of the bank is listed. After the filing of such designation the securities of such bank shall be exempted with respect to the filing of statements pursuant to section 16(a) with any exchange other than the designated exchange.

(4) Any director or officer who is required to file a statement on Form F-8 with respect to any change in his beneficial ownership of equity securities which occurs within six months after he became a director or officer of the bank issuing such securities, or within six months after equity securities of such bank first became registered pursuant to section 12 of the Act, shall include in the first such statement the information called for by Form F-8 with respect to all changes in his beneficial ownership of equity securities of such bank which occurred within 6 months prior to the date of the changes which require the filing of such statement.

(5) Any person who has ceased to be a director or officer of a bank which has equity securities registered pursuant to section 12(g) of the Act, or who is a director or officer of a bank at the time it ceased to have any equity securities so registered, shall file a statement on Form F-8 with respect to any change in his beneficial ownership of equity securities of such bank which shall occur on or after the date on which he ceased to be such director or officer, or the date on which bank ceased to have any equity

securities so registered, as the case may be, if such change shall occur within 6 months after any change in his beneficial ownership of such securities prior to such date. The statement on Form F-8 shall be filed within 10 days after the end of the month in which the reported change in beneficial ownership occurs.

(b) **Ownership of more than 10 per cent of a class of equity securities.** (1) In determining for the purpose of section 16(a) of the Act whether a person is the beneficial owner, directly or indirectly, of more than 10 per cent of any class of equity securities, such person shall be deemed to be the beneficial owner of securities of such class which such person has the right to acquire through the exercise of presently exercisable options, warrants or rights or through the conversion of presently convertible securities. The securities subject to such options, warrants, rights or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall be not be deemed outstanding for the purpose of computing the percentage of the class owned by any other person. This subparagraph shall not be construed to relieve any person of any duty to comply with section 16(a) of the Act with respect to any equity securities consisting of options, warrants, rights or convertible securities which are otherwise subject as a class to section 16(a) of the Act.

(2) For the purpose of this paragraph a person acting in good faith may rely on the information contained in the latest Form F-1, F-1B or F-2 filed with the Board under § 206.4 with respect to the amount of securities of the class outstanding or in the case of voting trust certificates or certificates of deposit the amount thereof issuable.

(3) For the purpose of determining percentage ownership of voting trust certificates or certificates of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall be deemed to consist of the amount of voting trust certificates or certificates of deposits issuable with respect to the total amount of outstanding equity securities of the class which may be deposited under the voting trust agreement or deposit agreement in question, whether or not all of such outstanding securities have been so deposited.

(c) **Disclaimer of beneficial ownership.** Any person filing a statement may expressly declare therein that the filing of such statement shall not be construed as an admission that such person is, for the purpose of section 16 of the Act the beneficial owner of any equity securities covered by the statement.

(d) **Ownership of securities held in trust.** (1) Beneficial ownership of a bank's securities for the purpose of section 16(a) shall include:

(i) the ownership of such securities as a trustee where either the trustee or members of his immediate family have a vested interest in the income or corpus of the trust,

(ii) the ownership of a vested beneficial interest in a trust, and

(iii) the ownership of such securities as a settlor of a trust in which the settlor has the power to revoke the trust without obtaining the consent of all beneficiaries.

(2) Except as provided in paragraph (d)(3) of this section, beneficial ownership of securities of registrant banks solely as a settlor or beneficiary of a trust shall be exempt from the provisions of section 16(a) of the Act where less than 20 per cent in market value of the securities having a readily ascertainable market value held by such trust (determined as of the end of the preceding fiscal year of the trust) consists of equity securities with respect to which reports are required by section 16(a) of the Act or would be required but for an exemption by the Securities and Exchange Commission, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation similar to the exemption provided for by this sentence. Exemption from section 16(a) of the Act is likewise accorded with respect to any obligation that would otherwise be imposed solely by reason of ownership as settlor or beneficiary of a bank's securities held in trust, where the ownership, acquisition, or disposition of such securities by the trust is made without prior approval by the settlor or beneficiary. No exemption pursuant to this subparagraph shall, however, be acquired or lost solely as a result of changes in the value of the trust assets during any fiscal year or during any time when there is no transaction by the trust in the securities otherwise subject to the reporting requirements of section 16(a) of the Act.

(3) In the event that 10 per cent of any class of any equity security of a bank is held in a trust, that trust and the trustees thereof as such shall be deemed a person required to file the reports specified in section 16(a) of the Act.

(4) Not more than one report need be filed to report any holdings of a bank's securities or with respect to any transaction in such securities held by a trust, regardless of the number of officers, directors, or 10 per cent stockholders who are either trustees, settlors, or beneficiaries of a trust if the report filed discloses the names of all trustees, settlors, and beneficiaries who are officers, directors,

or 10 per cent stockholders. A person having an interest only as a beneficiary of a trust shall not be required to file any such report so long as he relies in good faith upon an understanding that the trustee of such trust will file whatever reports might otherwise be required of such beneficiary.

(5) In determining, for the purposes of paragraph (a) of this § 206.6, whether a person is the beneficial owner, directly or indirectly, of more than 10 per cent of any class of equity securities of a bank, the interest of such person in the remainder of a trust shall be excluded.

(6) No report shall be required by any person, whether or not otherwise subject to the requirement of filing reports under section 16(a), with respect to his indirect interest in portfolio securities held by

(i) any holding company registered under the Public Utility Holding Company Act,

(ii) any investment company registered under the Investment Company Act,

(iii) a pension or retirement plan holding securities of a bank whose employees generally are the beneficiaries of the plan, or

(iv) a business trust with over 25 beneficiaries.

(e) **Certain transactions subject to section 16(a) of the Act.** (1) The granting, acquisition or disposition of any presently exercisable put, call, option, or other right or obligation to buy securities from, or to sell securities to, another person, or any expiration or cancellation thereof shall be deemed to effect such a change in the beneficial ownership of the bank's security to which the right or obligation relates as to require the filing of a statement reflecting the granting, acquisition or disposition of such right or obligation. Nothing in paragraph (e) of this section, however, shall exempt any person from filing the statements required upon the exercise of such put, call, option or other right or obligation to buy or sell securities.

(i) If any such right or obligation is not initially exercisable, the granting and acquisition thereof shall be reported in a statement filed for the month in which it became exercisable, unless the filing of such statement is otherwise not required.

(ii) The right of a pledgee or borrower of securities to sell the pledge or borrowed securities is not an option or right to sell securities within the meaning of this paragraph. However, the sale of the pledged or borrowed securities by the pledgee or borrower shall be reported by the pledgor or lender.

(iii) The right to acquire securities, or the obligation to dispose of securities, in connection with a merger or consolidation involving the bank issuing

the securities is not a right or obligation to buy or sell securities within the meaning of this paragraph.

(2) For the purpose of section 16(a) of the Act both the grantor and the holder of any presently exercisable put, call, option or other right or obligation to buy or sell securities shall be deemed to be beneficial owners of the securities subject to such right or obligation until it is exercised or cancelled or expires.

(3) Notwithstanding the foregoing, a statement need not be filed pursuant to section 16(a) of the Act:

(i) By any person with respect to the acquisition, expiration, surrender to the bank, or cancellation of any nontransferable stock option or stock appreciation right granted by the bank of the securities to which the option or right relates pursuant to a plan which meets the conditions specified in § 206.6(1), (2), (3), (4) and (5) (a), (b), (c), (d) and (e) of this chapter, or;

(ii) By any bank with respect to any put, call, option or other right or obligation to buy or sell securities of which it is the issuer. As used in this subparagraph (3), the term "plan" shall have the meaning assigned to it in subparagraph (4) of § 206.6(1).

**NOTE:** An option, otherwise nontransferable, is deemed to be nontransferable even though it may be disposed of by will or by descent and distribution upon the death of the holder.

(f) **Exemption from section 16 of securities purchased or sold by odd-lot dealers.** A bank's securities purchased or sold by an odd-lot dealer (1) in odd lots so far as reasonably necessary to carry on odd-lot transactions, or (2) in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of section 16 with respect to participation by such odd-lot dealer in such transactions.

(g) **Exemption from section 16(a) of the Act.** (1) Any acquisition of a bank's securities shall be exempt from section 16(a) of the Act where

(i) the person effecting the acquisition does not within six months thereafter effect any disposition, otherwise than by way of gift of securities of the same class, and

(ii) the person effecting such acquisition does not participate in acquisitions or in dispositions of securities of the same class having a total market value in excess of \$3,000 for any six-month period during which the acquisition occurs.

(2) Any acquisition or disposition of a bank's

securities by way of gift, where the total amount of such gifts does not exceed \$3,000 in market value for any six-month period, shall be exempt from section 16(a) of the Act and may be excluded from the computations prescribed in paragraph (g) (1) (ii) of this section.

(3) Any person exempted by paragraphs (g) (1) or (2) of this section shall include in the first report filed by him after a transaction within the exemption a statement showing his acquisitions and dispositions for each six-month period or portion thereof that has elapsed since his last filing.

(h) **Temporary exemption of certain persons from sections 16(a) and (b) of the Act.** During the period of 12 months following their appointment and qualification, a bank's securities held by the following persons shall be exempt from sections 16(a) and 16(b) of the Act:

(1) executors or administrators of the estate of a decedent;

(2) guardians or committees for an incompetent; and

(3) receivers, trustees in bankruptcy, assignees for the benefit of creditors, conservators, liquidating agents, and similar persons duly authorized by law to administer the estate or assets of other persons.

After the 12-month period following their appointment and qualification the foregoing persons shall be required to file reports under section 16(a) with respect to a bank's securities held by the estates that they administer and shall be liable for profits realized from trading in such securities pursuant to section 16(b) only when the estate being administered is a beneficial owner of more than 10 per cent of any class of equity security of a bank.

(i) **Exemption from section 16(b) of transactions that need not be reported under section 16(a).** Any transaction that has been or shall be exempted by the Board from the requirements of section 16(a) shall, insofar as it is otherwise subject to the provisions of section 16(b), be likewise exempted from section 16(b).

(j) **Exemption from section 16(b) of certain transactions by registered investment companies.** Any transaction of purchase and sale, or sale and purchase, of any equity security of a bank shall be exempt from the operation of section 16(b), as not comprehended within the purpose of that section, if the transaction is effected by an investment company registered under the Investment Company Act of 1940 and both the purchase and sale of such security have been exempted from the provisions of section 17(a) of the Investment Company Act of 1940 by an order of the Securities and Exchange

Commission entered pursuant to section 17(b) of that Act.

**(k) Exemption from section 16(b) of certain transactions effected in connection with a distribution.**

(1) Any transaction of purchase and sale, or sale and purchase, of an equity security of a bank that is effected in connection with the distribution of a substantial block of such securities shall be exempt from the provisions of section 16(b), to the extent specified in this paragraph (k), as not comprehended within the purpose of said section, upon the following conditions:

(i) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities;

(ii) The security involved in the transaction is (a) a part of such block of securities and is acquired by the person effecting the transaction, with a view to the distribution thereof, from the bank or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities, or (b) a security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution; and

(iii) Other persons not within the purview of section 16(b) are participating in the distribution of such block of securities on terms at least as favorable as those on which such person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of section 16(b) by paragraph (k) of this section. However, the performance of the functions of manager of a distributing group and the receipt of a *bona fide* payment for performing such functions shall not preclude an exemption that would otherwise be available under this paragraph.

(2) The exemption of a transaction pursuant to this paragraph (k) with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the conditions of this paragraph.

**(1) Exemption from section 16(b) of acquisitions of shares of stock and stock options and stock appreciation rights under certain stock incentive, stock option or similar plans.** Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right) pursuant to a plan as

defined in subparagraph (4)(i) of this paragraph, or any acquisition, expiration, cancellation or surrender to the bank of a stock option or stock appreciation right pursuant to such a plan by a director or officer of the bank shall be exempt from the operation of section 16(b) of the Act if the plan meets the following conditions:

(1) Approval by security holders. The plan has been approved, directly or indirectly, (i) by the affirmative votes of the holders of a majority of the securities of the bank present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the State or other jurisdiction in which the bank was chartered, or (ii) by the written consent of the holders of a majority of the securities of the bank entitled to vote: *Provided, however,* That if such a vote or written consent was not solicited substantially in accordance with the rules and regulations, if any, in effect under section 14(a) of the Act at the time of such vote or written consent, the bank shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan that would be required by the rules and regulations in effect under section 14(a) of the Act at the time such information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of (a) the first registration of an equity security under section 12 of the Act or (b) the acquisition of an equity security for which exemption is claimed. Such written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of mailing. Four copies of such written information shall be filed with, or mailed for filing to, the Board not later than the date on which it is first sent or given to security holders of the bank. For the purposes of this paragraph, the term "bank" includes a predecessor bank if the plan or obligations to participate thereunder were assumed by the bank in connection with the succession. In addition, any amendment to the plan shall be similarly approved if the amendment would:

(1) Materially increase the benefits accruing to participants under the plan;

(2) Materially increase the number of securities which may be issued under the plan; or

(3) Materially modify the requirements as to eligibility for participation in the plan.

(2) Disinterested administrators. If the selection of any director or officer of the bank to whom stock may be allocated or to whom stock options or stock

appreciation rights may be granted pursuant to the plan, or the determination of the number or maximum number or shares of stock which may be allocated to any such director or officer or which may be covered by stock options or stock appreciation rights granted to any such director or officer pursuant to the plan is subject to the discretion of any person, then such discretion shall be exercised only as follows:

(i) With respect to the participation of directors:

(a) By the board of directors of the bank, a majority of which board and a majority of the directors acting in the matter are disinterested persons;

(b) By, or only in accordance with the recommendation of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(c) Otherwise in accordance with the plan, if the plan: (1) Specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to stock options or stock appreciation rights granted to directors pursuant to the plan and the terms upon which, and the times at which, or the periods within which, such stock may be acquired or such options or rights may be acquired and exercised; or (2) sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time or similar factors.

(ii) With respect to the participation of officers who are not directors:

(a) By the Board of directors of the bank or a committee of three or more directors;

(b) By, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

(c) Otherwise in accordance with the plan, if the plan (1) Specifies the number or maximum number of shares of stock which officers may acquire or which may be subject to stock options or stock appreciation rights granted to officers pursuant to the plan and the terms upon which, and the times at which, or the period within which, such stock may be acquired or such options or rights may be acquired and exercised; or (2) Sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the bank, dividends paid, compensation

received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time or similar factors.

(iii) The provisions of this paragraph shall not apply with respect to any option or right granted or other equity security acquired, prior to the date of the first registration of an equity security under section 12 of the Act.

(3) Plan limitations. As to each participant or as to all participants the plan effectively limits the aggregate dollar amount of stock or the aggregate number of shares of stock which may be allocated, or which may be subject to stock options or stock appreciation rights issued pursuant to the plan. The limitations may be established on an annual basis, or for the duration of the plan, whether or not the plan has a fixed termination date, and may be determined either by fixed or maximum dollar amounts or fixed or maximum numbers of shares or by formulas based upon earnings of the bank, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time-to-time, or similar factors that will result in an effective and determinable limitation. Such limitations may be subject to any provision for adjustment of the plan or of stock allocable or options outstanding thereunder to prevent dilution or enlargement of rights.

(4) Definitions. Unless the context otherwise requires, all terms used in this rule shall have the same meaning as in the Act or elsewhere in Part 206. In addition, the following definitions apply:

(i) The term "plan" shall mean an option, bonus, appreciation, profit sharing, retirement, incentive, thrift, savings or similar plan that meets the following conditions:

(a) The plan must be set forth in a written document describing the means or basis for determining the eligibility of individuals to participate and either the price at which the securities may be offered or the method by which the price or the amount of the award is to be determined; and

(b) The plan must provide with respect to any option or similar right (including a stock appreciation right) offered pursuant to the plan that such option or right is not transferable other than by will or the laws of descent and distribution and that it is exercisable during the employee's lifetime only by him or his guardian or legal representative.

(ii) The term "exercise of an option, warrant or right" contained in the parenthetical clause of the first paragraph of § 206.6(1) shall not include:

(a) The making of an election to receive under any plan compensation in the form of stock or

credits therefor, provided that such election is made either prior to the making of the award or prior to the fulfillment of all conditions to the receipt of the compensation and, provided, further, that such election is irrevocable until at least six months after termination of employment;

(b) The subsequent crediting of such stock;

(c) The making of any election as to the time for delivery of such stock after termination of employment, provided that such election is made at least six months prior to any such delivery;

(d) The fulfillment of any condition to the absolute right to receive such stock; or

(e) The acceptance of certificates for shares of such stock.

(iii) The term "disinterested person" used in §§ 206.6(1)(2) and 206.6(1)(5) hereof shall mean an administrator of a plan who is not at the time he exercises discretion in administering the plan eligible and has not at any time within one year prior thereto been eligible for selection as a person to whom stock may be allocated or to whom stock options or stock appreciation rights may be granted pursuant to the plan or any other plan of the bank or any of its affiliates entitling the participants therein to acquire stock, stock options or stock appreciation rights of the bank or any of its affiliates.

(5) Cash settlements of stock appreciation rights. Any transaction involving the exercise and cancellation of a stock appreciation right issued pursuant to a plan (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, shall be exempt from the operation of section 16(b) of the Act, as not comprehended within the purpose of that section, if all the following conditions are met:

(i) Information about the issue. (a) The bank that is the issuer of the stock appreciation right has been subject to the reporting requirements of section 13 of the Act for at least a year prior to the transaction and has filed all reports and statements required to be filed pursuant to that section during that year.

(b) The bank that is the issuer of the stock appreciation right on a regular basis does release for publication quarterly and annual summary statements of revenues and earnings. This condition shall be deemed satisfied if the specified financial data appears (1) on a wire service, (2) in a financial news service, (3) in a newspaper of general circulation, or (4) is otherwise made publicly available.

(ii) Limitation of the right and any related option. Neither the stock appreciation right nor any related stock option shall have been exercisable

during the first six months of their respective terms, except that this limitation shall not apply in the event death or disability of the grantee occurs prior to the expiration of the six-month period.

(iii) Administration of the plan. (a) The plan shall be administered by either the board of directors, a majority of which are disinterested persons and a majority of the directors acting on plan matters are disinterested persons, or by a committee of three or more persons, all of whom are disinterested persons;

(b) The board or committee shall have sole discretion either (1) To determine the form in which payment of the right will be made (i.e., cash, securities, or any combination thereof), or (2) To consent to or disapprove the election of the participant to receive cash in full or partial settlement of the right. Such consent or disapproval may be given at any time after the election to which it relates.

(c) Any election by the participant to receive cash in full or partial settlement of the stock appreciation right, as well as any exercise by him of this stock appreciation right for such cash, shall be made during the period beginning on the third business day following the date of release of the financial data specified in § 206.6(1)(5)(i)(b) hereof and ending on the twelfth business day following such date. This subparagraph, (5)(iii)(c), however, shall not apply to any exercise by the participant of a stock appreciation right for cash where the date of exercise:

(1) Is automatic or fixed in advance under the plan;

(2) Is at least six months beyond the date of the stock appreciation right; and

(3) Is outside the control of the participant.

(iv) Compliance with other conditions of § 206.6(1). The plan under which the stock appreciation rights and any related options are granted shall meet the conditions, specified above in § 206.6(1)(1), (2), (3), and (4).

(v) Limit of the exemption. Nothing in this § 206.6(1)(5) provides an exemption from section 16(b) for the acquisition of stock upon the exercise of a stock appreciation right or a stock option.

(m) **Exemption from section 16(b) of long-term profits incident to sales within six months of the exercise of an option.** (1) To the extent specified in subparagraph (2) below, transactions involving the purchase and sale, or sale and purchase, of any equity security of a bank shall be exempt from the operation of section 16(b), as not comprehended within the purpose of that section, if such purchase is pursuant to the exercise of an option, warrant, or right either—

(i) acquired more than six months before its exercise, or

(ii) acquired pursuant to the terms of an employment contract entered into more than six months before its exercise.

(2) With respect to transactions specified in paragraph (m) (1) of this section, the profits inuring to the bank pursuant to section 16(b) shall not exceed the difference between the proceeds of sale and the lowest market price of any security of the same class within six months before or after the date of sale. Nothing in this paragraph (m) shall be deemed to enlarge the amount of profit that would inure to the bank in the absence of this paragraph.

(3) The disposition of any equity security of a bank shall also be exempt from the operation of section 16(b), as not comprehended within the purpose of that section, if purchased in a transaction specified in paragraph (m) of this section pursuant to a plan or agreement for merger or consolidation, or reclassification of the bank's securities, or for the exchange of its securities for the securities of another person that has acquired its assets, where the terms of such plan or agreement are binding upon all stockholders of the bank except to the extent that dissenting stockholders may be entitled, under statutory provisions or provisions contained in the bank's charter, to receive the appraised or fair value of their holdings.

(4) The exemptions provided by this paragraph (m) shall not apply to any transaction made unlawful by section 16(c) or by any regulations thereunder.

(5) The burden of establishing market price of a security for the purpose of this paragraph (m) shall rest upon the person claiming the exemption.

(n) **Exemption from section 16(b) of dispositions of equity securities pursuant to certain mergers or consolidations incident to formation of a bank holding company.** (1) There shall be exempt from the provisions of section 16(b), as not comprehended within the purpose of that section, the disposition of any equity security, pursuant to a merger or consolidation, of a bank which, prior to said merger or consolidation, held over 85 per cent of the combined assets of all the companies undergoing merger or consolidation, as determined by reference to their most recent available financial statements for a 12-month period prior to the merger or consolidation, if, in such merger or consolidation, there are issued, in exchange for such equity securities of such bank equity securities of a bank holding company as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841.

(2) Notwithstanding the foregoing, if an officer,

director, or stockholder shall make any purchase (other than a purchase exempted by this paragraph or any rule under section 16(b) of the Act) of an equity security of any company involved in the merger or consolidation and any sale (other than a sale exempted by this paragraph or any rule under section 16(b) of the Act) of an equity security in any other company involved in the merger or consolidation within any period of less than six months during which the merger or consolidation took place, the exemption provided by this rule shall be unavailable to such officer, director, or stockholder to the extent of such purchase and sale.

(o) **Exemption from section 16(b) of transactions involving the deposit or withdrawal of equity securities under a voting trust or deposit agreement.** Any acquisition or disposition of an equity security involved in the deposit of such security under, or the withdrawal of such security from, a voting trust or deposit agreement, and the acquisition or disposition in connection therewith of the certificate representing such security, shall be exempt from the operation of section 16(b) of the Act if substantially all of the assets held under the voting trust or deposit agreement immediately after the deposit or immediately prior to the withdrawal, as the case may be, consisted of equity securities of the same class as the security deposited or withdrawn; provided, however, that this rule shall not apply to the extent that there shall have been either (i) a purchase of an equity security of the class deposited and a sale of any certificate representing an equity security of such class, or (ii) a sale of an equity security of the class deposited and a purchase of any certificate representing an equity security of such class (otherwise than in a transaction involved in such deposit or withdrawal or in a transaction exempted by any rule under section 16(b)) within a period of less than six months which includes the date of the deposit or withdrawal.

(p) **Exemption from section 16(b) of transactions involving the conversion of equity securities.** (1) Any acquisition or disposition of an equity security involved in the conversion of an equity security which, by its terms or pursuant to the terms of the bank's corporate charter or other governing instruments, is convertible immediately or after a stated period of time into another equity security of the same bank, shall be exempt from the operation of section 16(b) of the Act; provided, however, that this paragraph shall not apply to the extent that there shall have been either (i) a purchase of any equity security of the class convertible (including any acquisition of or change in a conversion privilege) and a sale of any equity security of the class issuable upon conversion, or (ii) a sale of any equity security of the class con-

vertible and any purchase of any equity security issuable upon conversion (otherwise than in a transaction involved in such conversion or in a transaction exempted by any paragraph under section 16(b)) within a period of less than six months which includes the date of conversion.

(2) For the purpose of this paragraph, an equity security shall not be deemed to be acquired or disposed of upon conversion of an equity security if the terms of the equity security converted require the payment or entail the receipt, in connection with such conversion, of cash or other property (other than equity securities involved in the conversion) equal in value at the time of conversion to more than 15 per cent of the value of the equity security issued upon conversion.

(3) For the purpose of this paragraph, an equity security shall be deemed convertible if it is convertible at the option of the holder or of some other person or by operation of the terms of the security or of the governing instruments.

(q) **Exemption from section 16(b) of certain transactions involving the sale of subscription rights.** (1) Any sale of a subscription right to acquire any subject security of the same bank shall be exempt from the provision of section 16(b) of the Act, to the extent prescribed in this paragraph, as not comprehended within the purpose of said section, if:

(i) Such subscription right is acquired, directly or indirectly, from the bank without the payment of consideration;

(ii) Such subscription right by its terms expires within 45 days after the issuance thereof; and

(iii) Such subscription right by its terms is issued on a *pro rata* basis to all holders of the beneficiary security of the bank.

(2) When used within this paragraph the following terms shall have the meaning indicated:

(i) The term "subscription right" means any warrant or certificate evidencing a right to subscribe to or otherwise acquire an equity security.

(ii) The term "beneficiary security" means a security registered pursuant to section 12 of the Act to the holders of which a subscription right is granted.

(iii) The term "subject security" means a security which is the subject of a subscription right.

(3) Notwithstanding anything contained herein to the contrary, if a person purchases subscription rights for cash or other consideration, then a sale by such person of subscription rights otherwise exempted by this paragraph will not be so exempted

to the extent of such purchases within the 6-month period preceding or following such sale.

(r) **Exemption of certain securities from section 16(c).** Any equity security of a bank shall be exempt from the operation of section 16(c) to the extent necessary to render lawful under such section the execution by a broker of an order for an account in which he had no direct or indirect interest.

(s) **Exemption from section 16(c) of certain transactions effected in connection with a distribution.** Any equity security of a bank shall be exempt from the operation of section 16(c) to the extent necessary to render lawful under such section any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of the bank's securities, upon the following conditions:

(1) The sale is made with respect to an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on his behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in and underwriting, selling, or soliciting dealer group of which the dealer is a member at the time of the sale, whether or not the security to be so acquired is subject to a prior offering to existing security holders or some other class of persons; and

(2) Other persons not within the purview of section 16(c) are participating in the distribution of such block of securities on terms at least as favorable as those on which such dealer is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of section 16(c) by paragraph (s) of this section. The performance of the functions of manager of a distributing group and the receipt of a *bona fide* payment for performing such functions shall not, however, preclude an exemption that would otherwise be available under this paragraph.

(t) **Exemption of sales of securities to be acquired.** (1) Whenever any person is entitled, as an incident to his ownership of an issued equity security of a bank and without the payment of consideration, to receive another security of the bank "when issued" or "when distributed", the security to be acquired shall be exempt from the operation of section 16(c) if:

(i) The sale is made subject to the same conditions as those attaching to the right of acquisition;

(ii) Such person exercises reasonable diligence to deliver such security to the purchaser promptly after his right of acquisition matures; and

(iii) Such person reports the sale on the appropriate form for reporting transactions by persons subject to section 16(a).



(2) This paragraph (t) shall not be construed as exempting transactions involving both a sale of a security "when issued" or "when distributed" and a sale of the security by virtue of which the seller expects to receive the "when-issued" or "when-distributed" security, if the two transactions combined result in a sale of more units than the aggregate of those owned by the seller plus those to be received by him pursuant to his right of acquisition.

(u) **Arbitrage transactions under section 16.** It shall be unlawful for any director or officer of a bank to effect any foreign or domestic arbitrage transaction in any equity security of the bank, unless he shall include such transaction in the statements required by section 16(a) of the Act and § 206.6(a) and shall account to such bank for the profits arising from such transaction, as provided in section 16(b). The provisions of section 16(c) shall not apply to such arbitrage transactions. The provisions of § 206.6(a) and of section 16 shall not apply to any *bona fide* foreign or domestic arbitrage transaction insofar as it is effected by any person other than such director or officer of the bank issuing such security.

#### SECTION 206.7—FORM AND CONTENT OF FINANCIAL STATEMENTS

(a) **Principles of financial reporting.** Financial statements filed with the Board pursuant to this Part shall be prepared in accordance with generally accepted accounting principles and practices applicable to banks. The Board may from time to time issue releases on accounting principles and practices to be used with respect to specific areas.

(b) **Verification. (1) General.**

(i) Every verification with respect to financial statements filed pursuant to this Part shall be dated, shall be signed manually, shall indicate the city and State where issued, and shall identify without detailed enumeration the financial statements covered by the verification.

(ii) If the person or persons making a verification considers that he must take exceptions or express qualifications with respect thereto, each such exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate the effect of the matter on the financial statements to which it relates.

(2) **Opinions to be expressed by principal accounting officer and auditor.** Every verification by a bank's principal accounting officer and auditor shall state:

(i) The opinions of such persons with respect

to the financial statements covered by the verification and the accounting principles and practices reflected therein; and

(ii) The opinions of such persons as to any material changes in accounting principles or practices or in the method of applying the accounting principles or practices, or adjustments of the accounts, required to be set forth by paragraph (c)(5) of this § 206.7.

(3) **Certification by independent public accountants.**

(i) **Qualifications of independent public accountants.**

(a) The Board will not recognize any person as an independent public accountant who is not registered or licensed to practice as a public accountant by a regulatory authority of a State and in good standing with such authority as such an accountant.

(b) The Board will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (1) in which, during the period of his professional engagement to examine the financial statements being reported on or at the date of his report, he or his firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest, or (2) with which, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, he or his firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, except that a firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his employment by the person. For the purposes of section 206.7 the term "member" means all partners in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit.

(c) In determining whether a public accountant is, in fact, independent with respect to a particular person, the Board will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant

and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Board.

(ii) Representations as to the audit. The independent public accountant's certificate—

(a) shall state whether the audit was made in accordance with generally accepted auditing standards; and

(b) shall designate any auditing procedures generally recognized as normal (or deemed necessary by the accountant under the circumstances of the particular case) that have been omitted, and the reasons for their omission, but no procedure that independent accountants ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by clause (iii) below shall be omitted.

(iii) Opinions to be expressed. The independent public accountant's certificate shall state:

(a) The opinion of the accountant with respect to the financial statements covered by the certificate and the accounting principles and practices reflected therein;

(b) The opinion of the accountant as to any material changes in accounting principles or practices or in the method of applying the accounting principles or practices, or adjustments of the accounts, required to be set forth by paragraph (c)(5) of this § 206.7; and

(c) The nature of, and the opinion of the accountant as to, any material differences between the accounting principles and practices reflected in the financial statements and those reflected in the accounts after the entry of adjustments for the period under review.

(iv) Exceptions. If the accountant making the report considers that he must take exceptions or express qualifications with respect thereto, each such exception or qualification shall be stated specifically and clearly and, to the extent practicable, shall indicate the effect of the matter on the financial statements to which it relates.

(v) Certification of financial statements by more than one independent public accountant. If, with respect to the certification of the financial statements of any bank, the principal independent public accountant relies on an examination made by another independent public accountant of certain of the accounts of such bank or its affiliates, the certificate of such other accountant shall be filed (and the provisions of this subparagraph shall be applicable thereto); however, the certificate of such other accountant need not be filed (a) if no reference is

made directly or indirectly to such other accountant's examination in the principal accountant's certificate, or (b) if, having referred to such other accountant's examination the principal accountant states in his certificate that he assumes responsibility for such other accountant's examination in the same manner as if it had been made by him.

(c) **Provisions of general application.** (1) **Requirements as to form.** Financial statements shall be prepared in accordance with the applicable requirements of Forms 9A, B, C, and D. All money amounts require to be shown in financial statements may be expressed in even dollars or thousands of dollars. If shown in even thousands, an indication to that effect shall be inserted immediately beneath the caption of the statement or schedule, or at the top of each money column. The individual amounts shown need not be adjusted to the nearest dollar or thousand if the failure of the items to add to the totals shown is stated in a note as due to the dropping of amounts of less than \$1.00 or \$1,000 as appropriate.

(2) **Items not material.** If the amount that would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth.

(3) **Inapplicable captions and omission of unrequired or inapplicable financial statements.** No caption need be shown in any financial statement required by the forms set forth in this Part as to which the items and conditions are not present. Financial statements not required or inapplicable because the required matter is not present need not be filed, but the statements omitted and the reasons for their omission shall be indicated in the list of financial statements required by the applicable form.

(4) **Additional information.** In addition to the information required with respect to any financial statement, such further information shall be furnished as is necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(5) **Changes in accounting principles and practices and retroactive adjustments of accounts.** Any change in accounting principle or practice, or in the method of applying any accounting principle or practice, made during any period for which financial statements are filed that affects comparability of such financial statements with those of prior or future periods, and the effect thereof upon the net income for each period for which financial statements are filed, shall be disclosed in a note to the appropriate financial statement. Any material retroactive adjustment made during any period for

which financial statements are filed, and the effect thereof upon net income of prior periods, shall be disclosed in a note to the appropriate financial statement.

(6) **Summary of accounting principles and practices.** Information required in notes as to accounting principles and practices reflected in the financial statements may be presented in the form of a single statement. In such a case specific references shall be made in the appropriate financial statements to the applicable portion of such single statement.

(7) **Foreign currencies.** The basis of conversion of all items in foreign currencies shall be stated, and the amount and disposition of the resulting unrealized profit or loss shown. Disclosure should be made as to the effect, insofar as this can be reasonably determined, of foreign exchange restrictions upon the consolidated financial position and operating results of the bank and its subsidiaries.

(8) **Commitments.** If material in amount, the pertinent facts relative to firm commitments for the acquisition, directly or indirectly, of fixed assets and for the purchase, repurchase, construction, or rental of assets under long-term leases shall be stated briefly in the balance sheet or in footnotes referred to therein. Where the rentals or obligations under long-term leases are material the following shall be set forth in a note to the appropriate financial statement:

(i) Total rental expense (reduced by rentals from subleases, with disclosure of such amounts) entering into the determination of results of operations for each period for which an income statement is presented shall be disclosed. Rental payments under short-term leases for a month or less which are not expected to be renewed need not be included. Contingent rentals, such as those based upon usage or sales, shall be reported separately from the basic or minimum rentals. Rentals on noncapitalized financing leases shall be shown separately for both categories or rentals reported.

(ii) The minimum rental commitments under all noncancelable leases shall be disclosed, as of the date of the latest balance sheet presented, in the aggregate (with disclosure of the amounts applicable to noncapitalized financing leases) for (A) each of the five succeeding fiscal years; (B) each of the next three five-year periods; and (C) the remainder as a single amount. The amounts so determined should be reduced by rentals to be received from existing noncancelable subleases (with disclosure of the amounts of such rentals). For purposes of this rule, a noncancelable lease is defined as one that has an initial or remaining term of more

than one year and is noncancelable, or is cancelable only upon the occurrence of some remote contingency or upon the payment of a substantial penalty.

(iii) Additional disclosures shall be made to report in general terms: (A) the basis for calculating rental payments if dependent upon factors other than the lapse of time; (B) existence and terms of renewal or purchase options, escalation clauses, etc.; (C) the nature and amount of related guarantees made or obligations assumed; (D) restrictions on paying dividends, incurring additional debt, further leasing, etc.; and (E) any other information necessary to assess the effect of lease commitments upon the financial position, results of operations, and changes in financial position of the lessee.

(9) **General notes to balance sheets.** If present with respect to the person for which the statement is filed, the following shall be set forth in the balance sheet or in referenced notes thereto:

(i) Assets subject to lien. The amounts of assets mortgaged, pledged, or otherwise subject to a lien or security interest shall be designated and the obligation secured thereby, if any, shall be identified briefly.

(ii) Intercompany profits and losses. The effect upon any balance sheet item of profits or losses, resulting from transactions with affiliated companies not consolidated shall be stated. If impracticable of accurate determination without unreasonable effort or expense, an estimate or explanation shall be given.

(iii) Preferred shares. (a) If convertible, the terms of the conversion shall be described briefly; (b) If callable, the date or dates and the amount per share at which such shares are callable shall be stated; (c) Arrears in cumulative dividends per share and in total for each class of shares shall be stated; (d) Aggregate preferences on involuntary liquidation, if other than the par or stated value, shall be shown parenthetically in the equity section of the balance sheet. When the excess involved is material, there shall be shown the difference between the aggregate preference on involuntary liquidation and the aggregate par or stated value, a statement that this difference (plus any arrears in dividends) exceeds the sum of the par or stated value of the junior capital shares, surplus, and undivided profits if such is the case, and a statement as to the existence (or absence) of any restrictions upon surplus and/or undivided profits growing out of the fact that upon involuntary liquidation the preference of the preferred stock exceeds its par or stated value.

(iv) Pension and retirement plans. (a) A brief description of the essential provisions of any employee pension or retirement plan shall be given; (b) The estimated annual cost of the plan shall be

stated; (c) If a plan has not been funded or otherwise provided for, the estimated amount that would be necessary to fund or otherwise provide for the past-service cost of the plan shall be disclosed.

(v) Capital stock optioned to officers and employees. (a) A brief description of the terms of each option arrangement shall be given, including the title and amount of securities subject to the option, the year or years during which the options were granted, and the year or years during which the optionees became, or will become, entitled to exercise the options; (b) There shall be stated the number of shares under option at the balance sheet date, and the option price and the fair value thereof (per share and in total) at the dates the options were granted; the number of shares with respect to which options became exercisable during the period, and the option price and the fair value thereof (per share and in total) at the dates the options became exercisable; the number of shares with respect to which options were exercised during the period, and the option price and the fair value thereof (per share and in total) at the dates the options were exercised; and the number of unoptioned shares available at the beginning and at the close of the latest period presented, for the granting of options under an option plan. A brief description of the terms of each other arrangement covering shares sold or offered for sale to only directors, officers, and key employees shall be given, including the number of shares, and the offered price and the fair value thereof (per share and in total) at the dates of sale or offer to sell, as appropriate. The required information may be summarized as appropriate with respect to each of the categories referred to in this subclause (b); (c) The basis of accounting for such option arrangements and the amount of charges, if any, reflected in income with respect thereto shall be stated.

(vi) Restrictions that limit the availability of surplus and/or undivided profits for dividend purposes. Any such restriction, other than as reported in paragraph (c)(9)(iii) of this section shall be described, indicating briefly its source, its pertinent provisions, and, where appropriate and determinable, the amount of the surplus and/or undivided profits so restricted.

(vii) Contingent liabilities. A brief statement as to contingent liabilities not reflected in the balance sheet shall be made.

(viii) Standby letters of credit. State the amount of outstanding "standby letters of credit." 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 issuing bank (A) to repay money borrowed by or advanced to or for the account of the account party or (B) to make payment on account of any evidence of indebtedness undertaken by the account party, or (C) to make payment on account of any default by the account party in the performance of an obligation,<sup>3</sup> except that, if prior to or at the time of issuance of a standby letter of credit, the issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit, or 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, then the amount of that standby letter of credit need not be stated.

(ix) Defaults. The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured, shall be stated. Notation of such default or breach of covenant shall be made in the financial statements and the entire amount of obligations to which the default or breach relates shall be classified as a current liability if said default or breach accelerates the maturity of the obligations and makes it current under the terms of the related indenture or agreement. Classification as a current obligation is not required if the lender has waived the accelerated due date or otherwise agreed to a due date more than one year from the balance sheet date. If a default or breach exists, but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(x) Significant changes in bonds, mortgages, and similar debt. Any significant changes in the authorized or issued amounts of bonds, mortgages, and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

<sup>3</sup> 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.

(10) **General notes to statements of income.** If present with respect to the person for which the statement is filed, the following shall be set forth in the statement of income or in referenced notes thereto:

(i) Intercompany profits and losses. The amount of any profits or losses resulting from transactions between unconsolidated affiliated companies shall be stated. If impracticable of determination without unreasonable effort and expense, an estimate or explanation shall be given.

(ii) Depreciation and amortization. For the period for which statements of income are filed, there shall be stated the policy followed with respect to: (a) The provision for depreciation of physical properties or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts; (b) The provision for depreciation and amortization of intangible, or valuation allowances created in lieu thereof, including the methods and, if practicable, the rates used in computing the annual amounts; (c) The accounting treatment for maintenance, repairs, renewals, and improvements; and (d) The adjustment of the accumulated valuation allowances for depreciation and amortization at the time the properties were retired or otherwise disposed of, including the disposition made of any profit or loss on sale of such properties.

(iii) Bonus, profit sharing, and other similar plans. Describe the essential provisions of any such plans in which only directors, officers or key employees may participate, and state, for each of the fiscal periods for which income statements are required to be filed, the aggregate amount provided for all plans by charges to expense.

(iv) Income tax expense. (a) Disclosure shall be made, in the income statement or a note thereto, of the components of income tax expense, including: (1) taxes currently payable; (2) the net tax effects, as applicable, or (i) timing differences (Types of timing differences that are individually less than 15 per cent of the deferred tax amount in the income statement may be combined. If no individual type of difference is more than 5 per cent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate and the aggregate amount of timing differences is less than 5 per cent of such computed amount, disclosure of each of the separate types of timing differences may be omitted.) and (ii) operating losses; and (3) the net deferred investment tax credits. Amounts applicable to United States Federal income taxes, to foreign income taxes and to other income taxes

shall be stated separately for each major component, unless the amounts applicable to foreign and other income taxes do not exceed 5 per cent of the total for the component. (b) Provide a reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes for the difference. If no individual reconciling item amounts to more than 5 per cent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than 5 per cent of such computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than 5 per cent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts.

(v) Interest capitalized. (a) The amount of interest cost capitalized in each period for which an income statement is presented shall be shown within the income statement. Banks which follow a policy of capitalizing interest cost shall make the following additional disclosures required by items (b) and (c) below. (b) The reason for the policy of interest capitalization and the way in which the amount to be capitalized is determined. (c) The effect on net income for each period for which an income statement is presented of following a policy of capitalizing interest as compared to a policy of charging interest to expense as incurred.

(vi) Disagreements on accounting and financial disclosure matters. If, within the twenty-four months prior to the date of the most recent financial statements, a Form F-3 has been filed reporting a change of accountants and included in such filing there is a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, and if such disagreement, if differently resolved, would have caused the financial statements to differ materially from those filed, state the existence and nature of the disagreement. In addition, if during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved a reported disagreement and if such transactions are material and were accounted for or disclosed in a manner different from that which the former accountants apparently concluded was required, state the effect on the financial statements if the method which the former account-

ant apparently concluded was required had been followed. The effects on the financial statements need not be disclosed if the method asserted by the former accountant ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

(d) **Consolidated financial statements.** (1) Consolidated statements generally present more meaningful information to the investor than unconsolidated statements. Except where good reason exists, consolidated statements of the bank and its majority-owned significant subsidiaries should be filed.

(2) Every majority-owned bank-premises subsidiary and every majority-owned subsidiary operating under the provisions of section 25 or section 25(a) of the Federal Reserve Act ("Agreement Corporations" and "Edge Act Corporations") shall be consolidated with that of the reporting bank irrespective of whether such subsidiary is a significant subsidiary.

(3) If the financial statements of a subsidiary are as of a date or for periods different from those of the bank, such statements may be used as the basis for consolidation of the subsidiary only if the date of such statements is not more than 93 days from the date of the close of the bank's fiscal year; the closing date of the subsidiary is specified; the necessity for the use of different closing dates is explained briefly; and any changes in the respective fiscal periods of the bank and the subsidiary made during the period of report are indicated clearly.

(4) There shall be set forth in a note to each consolidated balance sheet filed a statement of any difference between the investment in subsidiaries consolidated, as shown by the bank's books, and the bank's equity in the net assets of such subsidiaries as shown by the subsidiaries' books. If any such difference exists, there shall be set forth the amount of the difference and the disposition made thereof in preparing the consolidated statements, naming the balance sheet captions, and stating the amount included in each.

(5) There may be filed financial statements in which majority-owned subsidiaries not consolidated with the parent are consolidated or combined in one or more groups, and 50 per cent or less owned persons, the investments in which are accounted for by the equity method are consolidated or combined in one or more groups, pursuant to principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the group or groups.

(6) A brief description of the principles followed in consolidating or combining the separate financial statements, including the principles followed in determining the inclusion or exclusion of (i) subsidiaries in consolidated or combined financial statements and (ii) companies in consolidated or combined financial statements, shall be stated in the notes to the respective financial statements.

(7) As to each consolidated financial statement and as to each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the Board which has a material effect on the financial statements, the persons included and the persons excluded shall be disclosed. If there have been any changes in the respective fiscal periods of the persons included made during the periods of the report which have a material effect on the financial statements, indicate clearly such changes and the manner of treatment.

(e) **Statement of changes in capital accounts.** A statement of changes in capital accounts shall be filed with each statement of income filed pursuant to this Part.

(f) **Statement of changes in financial position.** A statement of changes in financial position shall be filed with each statement of income filed pursuant to this Part.

(g) **Schedules to be filed.** (1) The following schedules shall be filed with each balance sheet filed pursuant to this Part: Schedule I—U.S. Treasury Securities, Securities of other U.S. Government Agencies and Corporations, and Obligations of States and Political Subdivisions; Schedule II—Other Securities; Schedule III—Other Loans; Schedule IV—Bank Premises and Equipment; Schedule V—Investments in, Dividend Income from, and Share in Earnings or Losses of Unconsolidated Subsidiaries; and Schedule VI—"Other" Liabilities for Borrowed Money.

(2) The following schedule shall be filed with each statement of income filed pursuant to this Part: Schedule VII—Allowance for Possible Loan Losses.

(3) Reference to the schedules referred to in subparagraphs (1) and (2) shall be made against the appropriate captions of the balance sheet or statement of income.

## APPENDIX

### SECURITIES EXCHANGE ACT OF 1934

Act of June 6, 1934 (48 Stat. 881)

(U.S. Code, Title 15, Sec. 78)

#### DEFINITIONS

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) The term **“exchange”** means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

\* \* \*

(7) The term **“director”** means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

\* \* \*

(9) The term **“person”** means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

\* \* \*

(10) The term **“security”** means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, or in general, any instrument commonly known as a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's 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.

\* \* \*

(11) The term **“equity security”** means any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

\* \* \*

[U.S.C., title 15, sec. 78c.]

#### REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) It shall be unlawful for any member, broker, or dealer, to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title and the rules and regulations thereunder.

(b) A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structure, and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are

to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

(E) remuneration to others than directors and officers exceeding \$20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than 2 years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by independent public accountants;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by independent public accountants; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, by-laws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(c) If in the judgment of the Commission any

information required under subsection (b) is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

(d) If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer shall be relieved from further compliance with the provisions of this section and section 13 of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(e) Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange becomes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

(f)(1) Notwithstanding the foregoing provisions of this section, any national securities exchange, subject to the terms and conditions hereinafter set forth—

(A) may continue unlisted trading privileges to which a security had been admitted on such exchange prior to the effective date of subsection (g)(1) of section 12 of this title.

(B) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security duly listed and registered on any other national securities exchange.

If an extension of unlisted trading privileges to a security was originally based upon its listing and registration on another national securities exchange,



such privileges shall continue in effect only so long as such security shall remain listed and registered on any other national securities exchange.

(2) No application pursuant to this subsection shall be approved unless the Commission finds, after appropriate notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is necessary or appropriate in the public interest or for the protection of investors.

(3) The Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this title.

(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a *bona fide* interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a *bona fide* interest in such proceeding, shall upon application be entitled to be heard.

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this title. The powers and duties of the Commission under section 19(b) of this title shall be applicable to the rules of an exchange in respect of any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in

the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 13, 14, or 16 of this title.

(g)(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) within one hundred and twenty days after the last day of its first fiscal year ended after the effective date of this subsection on which the issuer has total assets exceeding \$1,000,000 and a class of equity security (other than an exempted security) held of record by seven hundred and fifty or more persons; and

(B) within one hundred and twenty days after the last day of its first fiscal year ended after two years from the effective date of this subsection on which the issuer has total assets exceeding \$1,000,000 and a class of equity security (other than an exempted security) held of record by five hundred or more but less than seven hundred and fifty persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

(2) The provisions of this subsection shall not apply in respect of—

(A) any security listed and registered on a national securities exchange.

(B) any security issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940.

(C) any security, other than permanent stock,

guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance

company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code.

(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than three hundred persons. The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

(5) For the purposes of this subsection the term "class" shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms "total assets" and "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection.

(h) The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from sections 13, 14, or 15(d) or may exempt from section 16 any officer, director, or beneficial owner of securities of any issuer, any security

of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this title, classify issuers and prescribe requirements appropriate for each such class.

(i) In respect of any securities issued by banks the deposits of which are insured in accordance with the Federal Deposit Insurance Act or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, the powers, functions, and duties vested in the Commission to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16, (1) with respect to national banks and banks operating under the Code of Law for the District of Columbia are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, (3) with respect to all other insured banks are vested in the Federal Deposit Insurance Corporation, and (4) with respect to institutions the accounts

of which are insured by the Federal Savings and Loan Insurance Corporation are vested in the Federal Home Loan Bank Board. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of the date of enactment of this subsection, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

[U.S.C., title 15, sec. 781.]

## FORMS AND RELATED INSTRUCTIONS

Forms and related instructions, which are integral parts of this regulation, are assembled separately as follows:

Form F-1—Registration Statement for Securities of a Bank

Form F-1B—Registration of Securities of Certain Successor Issuers Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934

Form F-2—Annual Report

Form F-3—Current Report

Form F-4—Quarterly Report

Form F-5—Proxy Statement; Statement where Management Does Not Solicit Proxies

Form F-6—Statement in Election Contest

Form F-7—Initial Statement of Beneficial Ownership of Equity Securities

Form F-8—Statement of Changes in Beneficial Ownership of Equity Securities

Form F-9—Financial Statements

- A. Balance Sheet
- B. Statement of Income
- C. Statement of Changes in Capital Accounts
- D. Schedules

Form F-10—Registration Statement for Additional Classes of Securities of a Bank

Form F-11—Statement to be Filed Pursuant to § 206.4(h)(3) of Regulation F

Form F-12—Statement to be Filed Pursuant to § 206.5(m) of Regulation F

Form F-13—Tender Offer Statement

Form F-20—Amendment to Registration Statement or Periodic Report of Bank