FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 8691
November 27, 1979]

REGULATION O

Amendments Implementing the Reporting Requirements of the Financial Institutions Regulatory and Interest Rate Control Act of 1978

To All Member Banks, and Others Concerned,
in the Second Federal Reserve District:

The Board of Governors of the Federal Reserve System has amended, effective December 31, 1979, its Regulation O, "Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks," in order to implement the reporting requirements of Titles VIII and IX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA). The following statement was issued by the Board of Governors in this regard:

The Board's revised Regulation, which is effective December 31, applies to both State chartered member banks and national banks. The Office of the Comptroller of the Currency concurred in the amendments to Regulation O announced today. The revisions of the Regulation were adopted by the Board after consideration of comment received following publication of proposed amendments in March.

Title VIII of FIRA prohibits banks that maintain correspondent account relationships with other banks from extending credit on preferential terms to one another's executive officers, directors and principal shareholders, or from establishing a correspondent relationship where one of the banks involved has outstanding preferential credits to an executive officer, director or principal shareholder of the other bank.

As one basis for enforcing its requirements, Title VIII of FIRA establishes reporting requirements applying to executive officers and principal shareholders of insured banks, and a related report by the bank.

Title IX requires public disclosure, in annual reports by insured banks, of principal shareholders and executive officers who are in debt to the bank or its correspondent banks, and the aggregate amount of such indebtedness during the year.

To implement Title VIII, the revised Regulation requires:

1. That each executive officer and principal shareholder of an insured bank should report annually, to the bank's board of directors, their own indebtedness, and that of their "related interests" to each of the insured bank's correspondent banks, the amount of debt outstanding 10 days before the report is filed, the range of interest rates on such loans and other terms and conditions of the loans. A related interest is a company controlled by, and political or campaign committees controlled by or benefiting, bank officials and shareholders. For the purposes of reporting requirements, Regulation O, as amended, defines a correspondent bank as a bank that maintains an account at an insured bank that exceeds an average daily balance of $100,000, or half of one percent of the insured bank's total deposits.

2. That each insured bank forward an annual publicly available report to the appropriate banking agency listing the name of each executive officer or principal shareholder who files a report of indebtedness with the bank's board of directors, and the aggregate amount of indebtedness of these persons and their related interests to the insured bank's correspondent banks.

To implement Title IX, the revised Regulation requires:

That each insured bank file with its appropriate regulator an annual report, available to the public upon request, listing the names of the bank's principal shareholders as of December 31, a list of executive officers and principal shareholders of the bank who were indebted, or whose related interests were indebted to the bank during the year, and the aggregate amount of such debt to the bank.

The first such annual report will cover the period from July 1, 1979 to December 31, 1979.

(OVER)

Executive officers and principal shareholders filing reports of indebtedness under Title VIII will file before January 31, 1980, and the insured banks will file reports with their appropriate regulators, based on these reports, by March 31.

Enclosed—for member banks in this District—is a copy of the complete text of the amended regulation, together with the text of the notice submitted to the *Federal Register* announcing the changes. These materials will be published in the *Federal Register;* copies will also be furnished upon request directed to the Circulars Division of this Bank.

The revised regulation is in the process of being printed in pamphlet form by the Board of Governors and will be sent to you as soon as it is available. Any questions regarding the regulation should be directed to our Consumer Affairs and Bank Regulations Department (Tel. No. 212-791-5914).

THOMAS M. TIMLEN,
First Vice President.

BOARD OF GOVERNORS

of the

FEDERAL RESERVE SYSTEM

LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

REGULATION O

(12 CFR 215)

(In process of being printed; revised regulation effective December 31, 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.

[Enc. Cir. No. 8691]

PART 215--LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

Subpart A--Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

Subpart B--Reports on Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks

Subpart A--Loans by Member Banks to their Executive Officers, Directors, and Principal Shareholders

SECTION 215.1--Authority, purpose, and scope

(a) Authority. This Subpart is issued pursuant to sections 11(i), 22(g) and 22(h) of the Federal Reserve Act (12 U.S.C. §§ 248(i), 375a, 375b(7)) and 12 U.S.C. § 1817(k)(3).

(b) Purpose and scope. This Subpart governs any extension of credit by a member bank to an executive officer, director, or principal shareholder of (1) the member bank, (2) a bank holding company of which the member bank is a subsidiary, and (3) any other subsidiary of that bank holding company. It also applies to any extension of credit by a member bank to (1) a company controlled by such a person and (2) a political or campaign committee that benefits or is controlled by such a person. This Subpart also implements the reporting requirements

of 12 U.S.C. § 375a concerning extensions of credit by a member bank to its executive officers and of 12 U.S.C. § 1817(k) concerning extensions of credit by a member bank to its executive officers and principal shareholders.

SECTION 215.2--Definitions

For the purpose of this Subpart, the following definitions apply unless otherwise specified:

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SECTION 215.9--Report on credit to executive officers

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SECTION 215.10--Annual report on aggregate credit to executive officers and principal shareholders

(a) Definitions. For the purposes of this section, the following definitions apply:

(1) "Aggregate amount of all extensions of credit" means the sum of the highest amount of credit outstanding during the calendar year (or, as an alternative, the highest end of the month credit outstanding during the calendar year) from the member bank to: (i) each of its executive officers,[7/] (ii) each of its principal shareholders, and (iii) each of the related interests of these persons.

(2) "Principal shareholder of a member bank" means any person[8/] (other than an insured bank, or a foreign bank as defined in 12 U.S.C. § 3101(7)) that, directly or indirectly, owns, controls, or has power to vote more than 10 per cent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (e.g., a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

7/ For purposes of this section and Subpart B, executive officers of a member bank do not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless, of course, the executive officer is also an executive officer of the member bank.

8/ The term "stockholder of record" appearing in 12 U.S.C. §§ 1817(k)(1) and 1972(2)(G) is synonymous with the term person.

(3) "Related interest" means any company controlled by a person and any political or campaign committee, the funds or services of which will benefit a person or that is controlled by a person. For the purposes of this section and Subpart B, a related interest does not include a bank or a foreign bank (as defined in 12 U.S.C. § 3101(7)).

(b) Contents of Report. On or before March 31 of each year, each member bank shall file with the appropriate Federal Reserve Bank in the case of State member banks, or the Comptroller of the Currency in the case of national banks or banks located in the District of Columbia, a report that shall include the following information with respect to the preceding calendar year:

(1) a list by name of each person who was a principal shareholder of the member bank on December 31;

(2) a list by name of each executive officer or principal shareholder of the member bank during the year to whom, or to whose related interests, the member bank had outstanding an extension of credit during the year; and

(3) the aggregate amount of all extensions of credit from the member bank to its executive officers and principal shareholders and their related interests.

(c) Availability of Report. The Board or the Comptroller, as the case may be, and the member bank shall make a copy of the report required by this section available to the public upon request.

SECTION 215.11--Civil penalties

As specified in section 29 of the Federal Reserve Act (12 U.S.C. 504), any member bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this Subpart (other than section 215.10) is subject to a civil penalty of not more than $1,000 per day for each day during which the violation continues.

Subpart B--Reports on Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks

SECTION 215.20--Authority, purpose, and scope

(a) Authority. This Subpart is issued pursuant to section 11(i) of the Federal Reserve Act (12 U.S.C. § 248(i)) and 12 U.S.C. §§ 1817(k)(3) and 1972(2)(F)(vi).

(b) Purpose and scope. This Subpart implements the reporting requirements of Title VIII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA") (P.L. 95-630), 12 U.S.C. § 1972(2)(G). Title VIII prohibits (1) preferential lending by a bank to executive officers, directors, and principal shareholders of another bank when there is a correspondent account relationship between the banks, and (2) the opening of a correspondent account relationship between banks when there is a preferential extension of credit by one of the banks to an executive officer, director, or principal shareholder of the other bank.

SECTION 215.21--Definitions

For the purposes of this Subpart, the following definitions apply unless otherwise specified:

(a) "Bank" has the meaning given in 12 U.S.C. § 1841(c), and includes a branch or agency of a foreign bank, or a commercial lending company controlled by a foreign bank or by a company that controls a foreign bank, where the branch or agency is maintained in a State of the United States or in the District of Columbia or the commercial lending company is organized under State law.

(b) "Company," "control of a company or bank," "executive officer,"[9/] "extension of credit," "immediate family," and "person" have the meanings provided in Subpart A.

(c) "Correspondent account" is an account that is maintained by a bank with another bank for the deposit or placement of funds. A correspondent account does not include:

(1) time deposits at prevailing market rates, and

(2) an account maintained in the ordinary course of business solely for the purpose of effecting federal funds transactions at prevailing market rates or making Eurodollar placements at prevailing market rates.

(d) "Correspondent bank" means a bank that maintains one or more correspondent accounts for a member bank during a calendar year that in the aggregate exceed an average daily balance during that year of $100,000 or 0.5 per cent of such member bank's total deposits (as reported in its first consolidated report of condition during that calendar year), whichever amount is smaller.

(e) "Principal shareholder" and "related interest" have the meanings provided in section 215.10 of Subpart A.

9/ See note 7 above.

SECTION 215.22--Report by executive officers and principal shareholders

(a) Annual Report. If during any calendar year an executive officer or principal shareholder of a member bank or a related interest of such a person has outstanding an extension of credit from a correspondent bank of the member bank, the executive officer or principal shareholder shall, on or before January 31 of the following year, make a written report to the board of directors of the member bank.[10/]

(b) Contents of Report. The report required by this section shall include the following information:

(1) the maximum amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests to each of the member bank's correspondent banks during the calendar year;

(2) the amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests outstanding to each of the member bank's correspondent banks as of ten business days before the report required by this section is filed;[11/] and

(3) a description of the terms and conditions (including the range of interest rates, the original amount and date, maturity date, payment terms, security, if any, and any other unusual terms or conditions) of each extension of credit included in the indebtedness reported under paragraph (b)(1) of this section.

(c) Definitions. For the purposes of this section:

(1) "Indebtedness" means an extension of credit, but does not include:

(i) commercial paper, bonds, and debentures issued in the ordinary course of business; and

(ii) consumer credit (as defined in 12 C.F.R. § 226.2(p)) in an aggregate amount of $5,000 or less from each of the member bank's correspondent banks, provided the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

10/ Persons reporting under this section are not required to include information on extensions of credit that are fully described in a report by a person they control or a person that controls them, provided they identify their relationships with such other person.

11/ If the amount of indebtedness outstanding to a correspondent bank ten days before the filing of the report is not available or cannot be readily ascertained, an estimate of the amount of indebtedness may be filed with the report, provided that the report is supplemented within the next 30 days with the actual amount of indebtedness.

(2) "Maximum amount of indebtedness" means, at the option of the reporting person, either (i) the highest outstanding indebtedness during the calendar year for which the report is made, or (ii) the highest end of the month indebtedness outstanding during the calendar year for which the report is made.

(d) Retention of reports at member banks. The reports required by this section shall be retained at the member bank for a period of three years. The Reserve Bank or the Comptroller, as the case may be, may require these reports to be retained by the bank for an additional period of time. The reports filed under this section are not required by this regulation to be made available to the public and shall not be filed with the Reserve Bank or the Comptroller unless specifically requested.

(e) Member bank's responsibility. Each member bank shall advise each of its executive officers and each of its principal shareholders (to the extent known by the bank) of the reports required by this section and make available to each of these persons a list of the names and addresses of the member bank's correspondent banks.

SECTION 215.23--Report by member banks

(a) On or before March 31 of each year, each member bank shall compile the reports filed under section 215.22 of this Subpart and shall forward the compilation to the Comptroller of the Currency in the case of a national bank or a bank located in the District of Columbia, or the appropriate Federal Reserve Bank in the case of a State member bank. This compilation shall contain only the information required in paragraph (b) of this section.

(b) Each member bank shall include in the report required under section 215.10 of Subpart A to be filed by March 31 of each year, the following information:

(1) a list by name of each executive officer or principal shareholder that files a report with the member bank's board of directors under section 215.22 of this Subpart; and

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10/ Persons reporting under this section are not required to include information on extensions of credit that are fully described in a report by a person they control or a person that controls them, provided they identify their relationships with such other person.

11/ If the amount of indebtedness outstanding to a correspondent bank ten days before the filing of the report is not available or cannot be readily ascertained, an estimate of the amount of indebtedness may be filed with the report, provided that the report is supplemented within the next 30 days with the actual amount of indebtedness.

(2) the aggregate amount (or sum) of the maximum amounts of indebtedness reported to the board of directors of the member bank under section 215.22(b)(1) by the member bank's executive officers and principal shareholders and their related interests.

By Order of the Board of Governors of the Federal Reserve System, November 19, 1979.

Theodore E. Allison
Secretary of the Board

TITLE 12--BANKS AND BANKING

CHAPTER II--FEDERAL RESERVE SYSTEM

SUBCHAPTER A--BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[12 CFR Part 215]

LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

(Docket No. R-0210)

AGENCIES: Board of Governors of the Federal Reserve System and Comptroller of the Currency.

ACTION: Final Rule.

SUMMARY: This final regulation is issued to implement the reporting requirements of Titles VIII and IX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 ("FIRA") (P.L. 95-630), 12 U.S.C. §§ 1817(k)(1) and 1972(2)(G). Title VIII requires executive officers and principal shareholders of federally insured banks to file an annual report with the boards of directors of their banks concerning the officers' or shareholders' indebtedness to correspondent banks (i.e., a bank that maintains a correspondent account for the insured bank). Title IX requires each federally insured bank to file annually a publicly available report with the appropriate Federal banking agency listing the bank's principal shareholders, all of the bank's officers or principal shareholders who are indebted, or whose related interests are indebted, to the bank or its correspondent banks during the year, and the aggregate amount of indebtedness of these persons and their related interests to the bank and to the bank's correspondent banks.

EFFECTIVE DATE: December 31, 1979.

FOR FURTHER INFORMATION CONTACT: James V. Mattingly, Jr., Assistant General Counsel, (202/452-3430), Bronwen Mason, Senior Attorney, (202/452-3564), Board of Governors of the Federal Reserve System, Washington, D.C. 20551; Larry Raz or Sharon Miyasato, Attorneys, (202/447-1880), Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East, S.W., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: On March 6, 1979, the Federal banking agencies published for comment proposed regulations to implement Titles VIII and IX of FIRA. The agencies received 106 letters of comment. Upon review of the comments received and after a reevaluation of the regulations published for comment, the agencies have made certain changes

in the proposed regulations. Those changes (as reflected in the final regulations), an explanation of the provisions of the final regulations, and a discussion of the comments received are set forth below.

A. REQUIREMENTS OF TITLES VIII AND IX

1. Prohibited transactions. Effective March 10, 1979, Title VIII of FIRA, which amended section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. § 1972), prohibits banks that maintain a correspondent account relationship with each other from extending credit to each other's executive officers, directors, or principal shareholders unless the extension of credit is (1) made on substantially the same terms as those prevailing at the time for comparable transactions with other persons and (2) does not involve more than the normal risk of repayment or present other unfavorable features. Title VIII also prohibits the opening of a correspondent account relationship between banks where there is a preferential extension of credit from one of the banks to an executive officer, director, or principal shareholder of the other bank.

A principal shareholder of a bank is a person that directly or indirectly owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of the bank. Shares of a bank or bank holding company owned or controlled by a member of an individual's immediate family are considered to be controlled by the individual for the purposes of determining principal shareholder status. Title VIII defines an executive officer as the term is defined in section 22(g) of the Federal Reserve Act. The Board has defined the term as used in that statute as a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the bank. The agencies have applied this definition, which is found in section 215.2(d) of Subpart A of the Board's Regulation O, to Titles VIII and IX.[1/]

While the proposed regulations included a subsection that restated the prohibitions of Title VIII, this restatement elicited little comment and has been eliminated from the final regulation. The final regulation, including the definitions contained therein, relate to the reporting requirements imposed by Titles VIII and IX of FIRA on member banks and their executive officers and principal shareholders. However, the final rule contains a definition of "correspondent account," which

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1/ Unlike the definition in Subpart A, an executive officer of a member bank, for the purposes of Titles VIII and IX and this Subpart, does not include an executive officer of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless that person is also an executive officer of the member bank. Similarly, a director of a member bank does not include a director of a bank holding company of which the member bank is a subsidiary or of any other subsidiary of that bank holding company unless that person is also a director of the member bank.

the agencies believe should be used by banks in complying with the prohibitions of Title VIII. In complying with these prohibitions, banks should also use the definition of executive officer in section 215.2(d) of the Board's Regulation O and the definition of control in section 215.2(b) of Regulation O.

2. Title VIII Reports by Executive Officers and Principal Shareholders. In addition to its prohibitions, Title VIII contains two reporting requirements. The first report is required from executive officers and principal "stockholders of record" of federally insured banks.[2/] Title VIII does not require this report to be made available to the public. As discussed in the next section, the second report is required from the insured bank itself and, under the statute, must be made available to the public. The Title VIII reports are not required from, and do not cover indebtedness of, bank directors unless the director is also a principal stockholder or an executive officer. As discussed below, the agencies have defined principal "stockholder of record" to mean a principal shareholder (i.e., a person that, directly or indirectly, owns, controls, or has the power to vote more than 10 per cent of any class of voting securities of the bank).

Under Title VIII, each executive officer or principal shareholder of an insured State bank is required to report to the board of directors of that bank annually the following items:[3/]

a. the "maximum amount of indebtedness" of the executive officer or principal shareholder and of each of that person's related interests (i.e., controlled companies or political or campaign committees) to each bank that maintains a correspondent account ("correspondent bank") for the reporting person's bank;

b. the amount of indebtedness outstanding as of a date 10 days before the report is filed of the executive officer or principal shareholder and of each of that person's related interests to each correspondent bank; and

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2/ While the prohibitions of Title VIII apply to all banks, the reporting requirements of Title VIII are limited to federally insured banks. As used in Titles VIII and IX, insured bank means a national bank, a State member bank, and a federally insured nonmember State bank.

3/ Under Title VIII, the executive officer or principal shareholder must file a report if the person is indebted during the year to a correspondent bank. If the officer or shareholder is not indebted to a correspondent bank, the officer or shareholder is not required to file a report. However, where the officer or shareholder is not indebted to a correspondent bank but a related interest(s) (controlled company or political or campaign committee) of the officer or shareholder is so indebted, the regulation requires the officer or shareholder to file a report concerning the indebtedness of the person's related interest(s).

c. the terms and conditions (including the range of interest rates) for each extension of credit included in the figure reported as the "maximum amount of indebtedness."[4/]

In answer to numerous comments reflecting concern over personal privacy, the agencies wish to stress that the bank is not required by Title VIII or IX or by these regulations to make these reports available to the public. The reports submitted by executive officers and principal shareholders to the board of directors of the insured bank must be maintained at the bank for three years and should not be forwarded to the appropriate Federal banking agency unless the agency so requests. The appropriate agency may require the reports to be retained by the bank for an additional period of time. The reports are, of course, subject to inspection by examiners of the appropriate Federal banking agency.

3. Title VIII Report By Insured Banks. Title VIII requires each insured bank to compile the reports submitted to it by its executive officers and principal shareholders and to furnish such compilation annually to the appropriate banking agency. The regulation specifies that this compilation requirement shall be satisfied through the submission of the information in the public report required to be filed by insured banks under Title VIII.

Title VIII requires each insured bank to file with the appropriate banking agency an annual report listing:

1. the name of each executive officer or principal shareholder who files a report of indebtedness with the bank's board of directors; and

2. the "aggregate amount of all extensions of credit" made to these persons and their related interests by each correspondent bank of the insured bank.

The agencies have defined "aggregate amount of all extensions of credit" as a single figure that represents the sum of the "maximum amounts of indebtedness" reported to the insured bank's board of directors by the bank's executive officers and principal shareholders. This report will be made a part of the report filed by the insured bank under Title IX. The Title IX report must be made available to the public by the appropriate Federal banking agency and by the bank itself.

4/ The regulation does not require a report on the terms and conditions of indebtedness outstanding 10 days before the report is filed.

4. Title IX Report By Insured Banks. Title IX requires each insured bank to file with the appropriate Federal banking agency an annual report listing:

1. the name of each of its principal shareholders as of December 31 of the reporting year;

2. the name of each executive officer or principal shareholder during the year who was indebted, or whose related interest was indebted, to the bank during the year;[5/] and

3. the "aggregate amount of all extensions of credit" by the insured bank during the year to these persons and their related interests.

As discussed in section B5 below, the agencies have defined "the aggregate amount of all extensions of credit" as the sum of the highest amount of credit extended by the member bank during the year to each of its executive officers and principal shareholders and to each of their related interests. The Title IX reports must be made available to the public by the insured bank and by the appropriate banking agency.

B. DISCUSSION OF ISSUES

The bulk of the comments the agencies received on the proposed regulation focused on particular situations in which the reporting requirements were not appropriate, would be costly, would impose substantial burden on reporting persons, or would be difficult, if not impossible, to compile. A discussion of the major issues raised by the comments and the steps taken by the agencies to address the issues follows.

1. Correspondent Account. While the prohibitions and reporting requirements of Title VIII are based on the existence of a correspondent account relationship, the statute does not define the term correspondent account. The proposed regulation defined the term correspondent account as an account maintained by one bank with another for the deposit or placement of funds. The notice accompanying the proposed regulation asked for comment on this definition as well as on whether time deposits and accounts maintained for federal funds transactions should be excluded from the definition of correspondent account. Most of the commenters were generally satisfied with the definition, provided that the suggested exclusions for time deposits and federal funds were adopted.

5/ In the regulation issued for comment, the agencies proposed that this list include each executive officer or principal shareholder of the member bank, whether or not the person was indebteded to the member bank. The agencies have modified this section to require a list of only those executive officers or principal shareholders who were indebted, or whose related interests were indebted, as more accurately reflecting the legislative intent of the statute as well as its structure.

In the final regulation, the agencies have excluded time deposits and accounts maintained solely for federal funds or Eurodollar transactions at prevailing market rates from the definition of correspondent account. These types of transactions are not generally considered as establishing correspondent accounts. The agencies believe these exclusions are appropriate and consistent with the Congressional intent behind the statute, which appears to have been focused on non-interest bearing or demand accounts. Since the excluded transactions are generally made only at prevailing market rates (and the exclusion is so limited in the regulation), the possibility of abuse of these types of accounts for the benefit of persons associated with the bank is remote.

While a number of commenters proposed additional exclusions from the definition of correspondent account (such as accounts maintained for credit card facilities or travellers checks, accounts opened in a fiduciary capacity, accounts maintained to clear checks or for securities transactions, accounts used for correspondent business for small banks, or accounts maintained for brief periods of time), the agencies do not believe that these exclusions are warranted. The legislative history of the statute indicates that the reason for its enactment was the difficulty experienced in determining whether an account (such as one used to clear checks) was being used for legitimate purposes or, in whole or in part, to secure benefits for bank insiders. The preferential lending prohibitions of Title VIII were designed to eliminate the necessity to prove that the account was not maintained for a legitimate purpose by prohibiting all preferential credit extensions by a correspondent bank, whether or not the correspondent account was maintained for a legitimate purpose.

2. Correspondent Bank. The regulation published for comment proposed to limit the reporting requirements of Title VIII to those correspondent banks that maintained correspondent accounts for the member bank of $100,000 or more during the reporting year. In other words, executive officers and principal shareholders of a member bank would report their indebtedness to the member bank's correspondent banks only where the correspondent account relationship aggregated $100,000 or more during the year. A cut-off figure was believed appropriate to eliminate reporting of indebtedness from banks maintaining correspondent accounts of an insignificant size, where there was believed to be little if any potential for insider abuse. Banks that hold insignificant accounts for another bank are not generally regarded as having a correspondent account relationship with that bank.

Most of the commenters favored a cut-off figure for the correspondent accounts based on an average daily balance during the year, since a correspondent account could exceed $100,000 for only a few days during the year and thus might not accurately reflect the extent of the correspondent relationship between the banks. While the agencies believe that a dollar cut-off for correspondent banks is appropriate, the agencies believe that an average daily balance of

$100,000 during the year may be too high in the case of smaller banks. Accordingly, the agencies have decided not to require a member bank's executive officers or principal shareholders to report on their indebtedness to banks that maintain correspondent accounts for the member bank that do not exceed an average daily balance of $100,000 or 0.5 per cent of the member bank's total deposits (as reported in the member bank's first consolidated report of condition during the reporting year), whichever amount is smaller.

3. "Stockholder of Record". The prohibitions of Title VIII apply to any person (company or individual) that owns, controls, or has power to vote more than 10 per cent of a bank's voting shares. The reporting requirements of Titles VIII and IX, however, apply to each "stockholder of record" who "directly or indirectly" owns, controls, or has the power to vote more than 10 per cent of a bank's voting shares. The term "stockholder of record" is not defined in the Act.

The proposed regulation defined "stockholder of record" in conformity with the prohibitions of Title VIII as any person who directly or indirectly owns, controls, or has the power to vote the bank's shares. This definition would include the actual owner of the shares, whether or not that person's name appears on the bank's stock register as the owner of the shares.[6/] The Board received no adverse comment on this aspect of the definition of principal stockholder. This interpretation is consistent with the legislative history of Titles VIII and IX, which shows a clear Congressional intent to cover the actual major shareholders of the bank rather than just those persons whose names appear on the bank's stock register.[7/] If Title VIII's reporting requirement were confined solely to stockholders whose names appear on the bank's stock register, the reporting requirements of the statute would not conform to the prohibitions of the statute and would be almost, if not completely, meaningless. Accordingly, the agencies have adopted in the final rule the definition of "stockholder or record" as proposed.

6/ The definition would also include those persons who control the member bank's parent bank holding company. A person (individual or company) that controls a member bank's parent bank holding company would "indirectly" control the member bank. Control of a company is defined, as in Title I of FIRA and Subpart A of Regulation O, as generally 25 per cent of the company's outstanding voting shares, control of the election of a majority of the company's board of directors, or the power to exercise a controlling influence over the management or policies of the company.

7/ See H. Rep. No. 95-1383, 95th Cong., 2d Sess. 6, 16 (1978); remarks of Congressman St Germain, 124 Congressional Record H11724 (Oct. 5, 1978).

4. Banks as Principal Shareholders. Under Titles VIII and IX, a bank that controls another bank could be viewed as a principal shareholder and subject to the reporting requirements of Titles VIII and IX. This situation would arise mainly in the case of foreign banks, since U.S. banks are generally prohibited from holding shares of another bank. The final regulation excludes banks (including insured banks and foreign banks) from the definition of principal shareholder for the purposes of the reporting requirements of Titles VIII and IX. Of course, individuals and non-bank companies controlling banks that control other banks are principal shareholders covered by the reporting requirements of Titles VIII and IX.

The agencies do not believe that normal and routine inter-bank transactions were the type of transactions for which the reporting requirements were designed or which they can adequately accommodate. Several commenters indicated that, because of the volume of routine inter-bank transactions, the bank principal shareholders would find the report extremely burdensome and costly, if not impossible, to compile. Inclusion of inter-bank transactions would also inflate the aggregate figure reported by the bank and would be misleading. The exclusion of bank principal shareholders from the reporting requirements of Titles VIII and IX is consistent with the lending restrictions of section 22(h) of the Federal Reserve Act (Title I of FIRA, 12 U.S.C. 375b), which excludes insured banks as principal shareholders, the exemption from the affiliate lending restrictions of section 23A of the Federal Reserve Act (12 U.S.C. § 371c) for loans by a member bank to an insured bank, where the member bank owns 50 per cent of the insured bank's voting shares, and the intent by Congress not to disrupt transactions between a bank and its correspondents.[8/]

5. Amount of Indebtedness to be Reported. Under Title VIII, the executive officers and principal stockholders of an insured bank must report to the board of directors of their bank the "maximum amount of indebtedness" of the officer or stockholder and each of that person's related interests to each of the insured bank's correspondent banks. The proposed regulation defined "maximum amount" as the highest indebtedness outstanding during the year. The final regulation retains this definition of maximum amount, but allows the reporting person the option of reporting instead the highest end of the month indebtedness outstanding during the year. A number of commenters favored the highest end of the month balance because smaller banks do not maintain records that indicate daily borrower indebtedness. This option would allow the reporting person to check only the monthly loan statements from lending banks, thereby reducing the time and burden of the reporting requirement to the reporting person as well as the correspondent banks.

8/ Since foreign banks and their U.S. bank subsidiaries deal with many of the same correspondent banks, the inclusion of the foreign bank as a principal shareholder would restrict (and in some cases prohibit) normal transactions between the foreign bank and its own correspondent banks. Such a result does not appear to have been intended by Congress.

In the notice to the regulation proposed for comment, the Board asked for comment on whether "maximum amount" should be defined as the simple sum of all extensions made during the year and whether this alternative definition would be less burdensome for the reporting person. The commenters universally recommended against this approach on the basis that the sum approach would yield a highly inflated and misrepresentative figure. The commenters also did not believe that the sum approach would reduce the reporting burden to any significant extent. Accordingly, the agencies have determined not to adopt the sum approach.

As indicated above, under Title VIII the insured bank reports to the appropriate Federal banking agency, "the aggregate amount of all extensions of credit" to its executive officers and principal shareholders and their related interests from correspondent banks. The agencies have defined the "aggregate amount" as the sum of the maximum amounts of indebtedness reported to the bank's board of directors by its executive officers and principal shareholders. In other words, the banks are only required to total the figures reported to them by their officers and shareholders and submit this total (a single figure) to the appropriate agency.

Under Title IX, the insured bank reports to the appropriate agency the "aggregate amount of all extensions of credit" the insured bank makes to its executive officers and principal shareholders and their related interests. Consistent with the definition in Title VIII, the agencies have defined "aggregate amount" in Title IX as the sum of the highest amounts of credit outstanding during the year (or as an alternative the highest end of the month credit outstanding during the year) from the member bank to each of its executive officers and principal shareholders and to each of the related interests of such persons. The sum of the highest amounts (rather than the sum of all) credit extended would be reported. This approach would, as in the Title VIII report, more accurately reflect the extent to which the bank is extending credit to its insiders. The commenters favored this definition of "aggregate amount" because it would be more representative of the extent of lending by a bank to its officers and shareholders.

6. Banks as Related Interests. Under Title IX, each member bank must report the aggregate amount of credit extended to its principal shareholders (which by definition would include the bank's parent bank holding company) and the related interests of the principal shareholders, which would include all the other subsidiaries (including banks) of the parent bank holding company. In the case of multi-bank holding companies, the volume of indebtedness between bank subsidiaries could be substantial. The commenters indicated that the practical difficulties and the burden and cost of calculating and keeping track of these inter-bank transactions would be immense. Several of the commenters indicated they did not believe it possible to comply because of the number of their subsidiaries and the extent of their operations. Moreover, this inter-bank indebtedness would tremendously inflate the aggregate amount of debt reported and render the figure all but meaningless.

This same problem exists in Title VIII but is greatly magnified. Under Title VIII, a principal shareholder of an insured bank must report on indebtedness to the shareholder and to each of the shareholder's related interests from each of the insured bank's correspondent banks. Since a bank holding company qualifies as a principal shareholder, a bank holding company must report not only on its indebtedness to each of the correspondent banks of each of its subsidiary banks, but also on the indebtedness of each of the holding company's related interests (including each of its subsidiary banks) to each of the correspondent banks of each of the holding company's subsidiary banks. In the case of a multi-bank holding company system, the number and complexity of the reports and the corresponding recordkeeping burden is immense.[9/] To comply with the reporting requirements, the holding company must maintain records on the transactions between each of its subsidiary banks and all the correspondents of all of its other subsidiary banks. Considering the volume of interbank transactions between correspondents and the number of correspondent banks involved, the recordkeeping burden would be substantial, would exceed any benefit derived from the report, and would tend to disrupt normal banking relationships.

In light of the undue burden that would result in these cases and in accordance with the intent of Congress in Titles VIII and IX not to disrupt routine transactions between banks, the agencies have determined to exclude banks (including foreign banks) from the definition of "related interest" in the final regulation. The exclusion of insured banks is entirely consistent with the statutory definition of "company" in section 22(h) of the Federal Reserve Act (Title I of FIRA). In that Title, Congress expressly excluded insured banks from the definition of company so as not to interfere with, and in recognition of the tremendous volume of, inter-bank transactions. Since the Title IX report was intended by Congress as a report for Title I indebtedness (that is indebtedness of a bank's own insiders to the bank), the agencies believe the exclusion of insured bank from the definition of company is appropriate and consistent with the Congressional intent underlying Title IX. The information on inter-bank transactions among bank holding company subsidiary banks is available to the agencies through reports and examinations of bank holding companies.

9/ This is particularly true since in many cases affiliate banks have correspondent account relationships with many of the same banks. The statute was clearly not intended to prohibit or require reports on extensions of credit to a bank from its correspondent banks. Inclusion of banks as related interests would have this effect in many cases.

The exclusion of banks from the definition of related interest for the Title VIII report is also consistent with the Congressional intent underlying Title VIII. In that Title, Congress intended to prohibit the misuse of a bank's correspondent account for the benefit of insiders through preferential extensions of credit. There was no intent to restrict, or require reports on, routine inter-bank transactions or credit extensions by a correspondent bank to the depositing bank itself.[10/] See H. Rep. No. 1383, 95th Cong., 2d Sess., 8, 13 (1978). This Congressional intent is also evidenced in the incorporation in Title VIII of the definition of "extension of credit" in section 23A of the Federal Reserve Act, which definition excludes certain routine inter-bank transactions.

7. Types of Indebtedness Reported. Under Title VIII, executive officers or principal shareholders must report on their indebtedness and their related interests' indebtedness to correspondent banks. The proposed regulation incorporated the definition of "extension of credit" contained in Subpart A of the Board's Regulation O. Under that definition, a purchase by a correspondent bank of commercial paper, publicly traded bonds or debentures issued by a principal shareholder of a bank (or a related interest of the principal shareholder) for which the correspondent bank maintained a correspondent account would constitute an extension of credit and would be reportable. A number of commenters indicated that the burden imposed on the reporting person to maintain records on purchases of commercial paper of the reporting person or of a related interest would be considerable. Indeed, if the paper is in bearer form, the reporting person may not know which, if any, correspondent banks may have purchased the paper.

The final regulation defines the term "indebtedness" as an extension of credit as defined in Subpart A of Regulation O, but excludes commercial paper, bonds, and debentures issued in the ordinary course of business. The agencies believe that Congress did not intend to require reports on these types of transactions as there appears little if any potential for the type of correspondent account abuse that the reporting requirements of Title VIII were intended to reveal. Accordingly, the agencies have determined that it would be appropriate and consistent with the Act not to include such items as indebtedness.

The agencies have also excluded from the term indebtedness consumer credit aggregating $5,000 or less from each correspondent bank, provided the indebtedness is incurred under terms that are not more favorable than those offered to the general public. This exclusion merely carries forwarded the exclusion of $5,000 in open end credit from the definition of "extension of credit" in Subpart A of Regulation O.

10/ The focus of Congressional attention in this area was on individuals who had used their bank positions for their personal benefit. There is little, if any, evidence that Congress intended to cover bank holding companies as insiders or bank subsidiaries as related interests for the purposes of these reports.

8. Description of the Terms and Conditions of Indebtedness. In addition to reporting information on the amount of indebtedness to correspondent banks, the principal shareholder or executive officer is required by Title VIII to report information on the terms and conditions (including the range of interests rates) of such indebtedness. The final regulation requires the reporting person to submit information on the terms and conditions (including the range of interest rates, the original amount, date, maturity, payment terms, security, if any, and any other unusual term or condition) on each extension of credit that is included in the maximum amount of indebtedness reported. The terms and conditions must be reported for extensions of credit to the reporting person as well as the related interests of the reporting person. The reporting person is not required to provide this information for the indebtedness reported 10 days before the report is filed.

9. Time for Filing Reports. The proposed regulation required executive officers and principal shareholders to file reports of indebtedness with their bank's board of directors by January 10 of each year. The insured bank was required to report to the appropriate bank agency by January 31. A large number of commenters indicated that the January 10 date is too close to the end of the year when numerous other reports must be filed. A number of banks also suggested a later date for the bank's January 31 reporting date.

In view of these comments, the final regulation provides that executive officers and principal shareholders must report to their bank on or before January 31 of each year, rather than by January 10. The bank must report to the appropriate agency by March 31 of each year, rather than January 31.

Under Title VIII, executive officers and principal shareholders must still report on their indebtedness to correspondent banks outstanding 10 days before the date the report is filed with their bank's board of directors. A number of commenters indicated that the 10 day period did not provide enough time to compile the amount of indebtedness outstanding to correspondent banks 10 days before the date the report is filed. The 10-day time limit is a requirement of the statute. However, in view of the fact that the reporting person may not be able to determine this amount in the short time period provided, the agencies have provided in the final regulation that the officer or shareholder may estimate the amount of indebtedness outstanding 10 days before the report is filed provided the correct amount is filed within the next 30 days.

In the notice accompanying the proposed regulation, the agencies indicated that they would consider limiting the time period for which the reports must be filed in the first year to the period from July 1 through December 31, 1979. The agencies believe this is

necessary in order to provide for the orderly implementation of the statute's reporting requirements. The agencies do not believe that any further extension of the period is necessary since the reporting persons and banks were allowed sufficient time between the publication of the proposed regulation and the beginning of the reporting period to make adequate preparations for the reporting requirements.

10. Forms. The agencies are preparing forms for the public reports required to be filed by insured banks under Titles VIII and IX. The first of these reports is not due to be filed until March 31, 1980. A suggested format for the reports to be made by executive officers and principal shareholders to their bank's board of directors is also being prepared. This form is not a mandatory agency form, but will be provided as a guide to assist executive officers and principal shareholders in complying with their reporting requirements under Title VIII. These forms will be made available to member banks in the near future for distribution to their executive officers and principal shareholders.

11. Responsibility of Insured Banks to Inform Officers and Shareholders of Requirements of Title VIII. The agencies have also required that each insured bank advise its executive officers and principal shareholders (to the extent known by the bank) of the reports required by Title VIII and to make available to these persons a list of the insured bank's correspondent banks. This requirement is necessary to ensure that all persons required to file the Title VIII reports with their bank's board of directors are aware of the requirements of the statute and are provided with the names of correspondent banks necessary to comply with the statute.

The expanded procedures set forth in the Board's policy statement of January 15, 1979 (44 F.R. 3957), were not strictly followed in developing this regulation, since the proposal was initiated before the policy statement was adopted. The regulation imposes no report burdens or record keeping costs that are not required by the statute. In the development of this final regulation, the Board has complied with the spirit and intent of its policy statement by making every effort to reduce unnecessary regulatory burdens with due regard for the purposes of the statute.

Accordingly, the Board of Governors of the Federal Reserve System hereby amends the Board's Regulation O (12 CFR Part 215) to read as set forth below: