AT-10299A
June 7, 1989

To the Addressee:

Enclosed -- for those who maintain sets of the Board of Governors' regulations -- are the following documents:

1. The Official Staff Commentary on Regulation E, "Electronic Fund Transfers," as amended effective April 1, 1989. (This pamphlet supersedes the previous revision of the Commentary and all subsequent amendments thereto.)

2. Regulation H, "Membership of State Banking Institutions in the Federal Reserve System," as amended effective April 1, 1989. (This pamphlet supersedes the previous revision of the regulation and all subsequent amendments thereto.) Appendix A, "Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure," is not included in the current printing of this regulation and will be issued by the Board as a separate pamphlet entitled "Capital Adequacy Guidelines"; the new pamphlet will be sent to you as soon as it is available.*

3. Regulation Y, "Bank Holding Companies and Change in Bank Control," revised effective March 15, 1989. Appendix A, "Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure," and Appendix B, "Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks: Leverage Measure," are not included in the revised printing; these guidelines will be included in the new pamphlet, "Capital Adequacy Guidelines," which will be sent to you as soon as it is available.**

Questions regarding Regulation E or H may be directed to our Compliance Examinations Department (Tel. No. 212-720-5914); questions regarding Regulation Y may be directed to our Domestic Banking Applications Division (Tel. No. 212-720-5861).

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

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*Until you receive the new pamphlet, you should retain your copy of the Federal Register notice of January 27, 1989 (Vol. 54, No. 17) entitled "Capital; Risk-Based Capital Guidelines; Final Rule," which was sent to you with our Circular No. 10286, dated February 3, 1989.

**Until you receive the new pamphlet, you should not discard your existing copy of Regulation Y (dated February 3, 1984); in addition, you should also retain your copy of the previously mentioned Federal Register notice.

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Board of Governors of the Federal Reserve System

A-10299A

Official Staff Commentary on Regulation E Electronic Fund Transfers

As amended effective April 1, 1989

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Any inquiry relating to Regulation E should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

April 1989

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Official Staff Commentary on Regulation E

As amended effective April 1, 1988

Following is an official staff interpretation of Regulation E issued pursuant to section 205.13(b). References are to sections of the regulation or the Electronic Fund Transfer Act (15 USC 1693 et seq.).

The commentary covers all sections of the regulation except section 205.1, which is self-explanatory. The questions are identified by hyphenated numbers. The first part of the number indicates the regulatory section; the second part, the sequential order of a particular question within that section. For example, 9-10 indicates the tenth question in section 205.9. Catchlines have been added to make it easier for users to locate questions.

SECTION 205.2—Definitions and Rules of Construction

Q2–1: *Access devices.* What are some examples of access devices?

A: Access devices include debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer. The term does not include magnetic tapes or other devices used internally by a financial institution to initiate electronic fund transfers. (§ 205.2(a)(1))

Q2–2: *Profit-sharing and pension accounts.* Are profit-sharing and pension accounts covered by the definition of "account"?

A: When such accounts are established under a trust agreement, as is generally the case, they are exempt from coverage by section 205.3(f). (§ 205.2(b))

Q2–3: *Escrow accounts.* Escrow accounts are frequently established to ensure payment of items such as real estate taxes, insurance premiums, and completion of repairs or improvements; are they considered asset accounts?

A: No. These funds are not consumer asset accounts for purposes of the regulation. In an arrangement of this type, the funds are not solely in the consumer's control; control is shared with a financial institution, escrow agent, or other party. (§ 205.2(b))

Q2–4: *U.S. savings bond accounts.* Is an account that is established to accumulate funds for the purchase of U.S. savings bonds subject to the regulation?

A: No. Such accounts generally are not established by or in the control of the consumer, who has merely authorized the purchase of bonds in a given denomination and has set the periodic amount to be withheld or transferred for this purpose. (§ 205.2(b))

Q2–5: *Christmas or vacation club accounts.* Are Christmas club or vacation club accounts subject to the regulation?

A: Christmas club and vacation club accounts are consumer asset accounts. In a great many cases, however, they are not subject to the regulation, because all *electronic* transfers to and from the account have been authorized in advance by the consumer and are to or from another account of the consumer at the same institution. (§§ 205.2(b) and (g) and 205.3(d))

Q2–5.5: *Retail repurchase agreements.* A retail repurchase agreement (repo) is essentially a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities. Is a repo an account for purposes of Regulation E?

A: While repos may not be deposits for purposes of some other banking regulations, repos are accounts as defined in Regulation E. (§ 205.2(b))

Q2–6: *Business day—substantially all business functions.* In the definition of "business

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day," what does "substantially all business functions" include?

A: The phrase includes both the public and the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions) but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the various business-day standards set by the regulation for reporting lost or stolen access devices, resolving errors, etc. (§ 205.2(d))

Q2–7: *Business day—telephone line.* If an institution makes a telephone line available on Sundays for reporting the loss or theft of an access device but performs no other business functions, is Sunday a business day?

A: No. Mere availability of a telephone line does not satisfy the "substantially all business functions" standard. (§ 205.2(d))

Q2–8: *Business day—duration.* Does "business day" refer only to the hours during which the financial institution carries on substantially all business functions?

A: For purposes of the various business-day standards set by the regulation, a business day includes the entire 24-hour period ending at midnight. This means that a notice satisfies the time limits even if given outside business hours. The regulation does not, however, require that telephone lines be available on a 24-hour basis. (§ 205.2(d))

Q2–9: *Business day—short hours.* If a financial institution engages in substantially all business functions until 12 noon on Saturdays instead of its normal 3 p.m. closing, are Saturdays business days?

A: The financial institution may determine, at its election, whether an abbreviated day is a business day. The regulation does not specify the number of hours that an institution must be open in order to have a business day. (§ 205.2(d))

Q2–10: *Fund transfer—payments in currency.* The term "electronic fund transfer" excludes payments made by check, draft, or similar paper instrument at an electronic terminal. What about payments made in currency at an electronic terminal?

A: Payments in currency are not electronic fund transfers, because they do not debit or credit a consumer's account. (§ 205.2(g))

Q2–11: *Fund transfer—deposits of currency, checks.* Does the term "electronic fund transfer" include deposits of currency and checks at an automated teller machine (ATM)?

A: A deposit made at an ATM or other electronic terminal is an electronic fund transfer for purposes of the regulation if there is a specific agreement between the financial institution and the consumer for the provision of EFT services to or from the particular account to which the deposit is made. (§ 205.2(g); see § 205.9(b)(1)(iv), footnote 4a)

Q2–12: *Fund transfer—payroll allotments to repay credit.* Does the term "electronic fund transfer" include preauthorized payroll allotments that are made directly to a creditor to repay a credit extension?

A: No, because these payments to a creditor do not debit or credit a consumer asset account. (§ 205.2(g))

Q2–12.5: *Fund transfer—withholding of income tax on interest.* A financial institution electronically debits a portion of the interest on a consumer account for transmittal to the Internal Revenue Service, to comply with withholding requirements. Is the debit subject to the regulation?

A: No. (§ 205.2(g))

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Q2–12.6: *Fund transfer—electronic payment of government benefits.* A recipient of government benefits, such as public assistance or food stamps, receives the benefits from an automated teller machine or a staffed electronic terminal. For example, the recipient presents an identification card to a clerk, the card is run through an electronic terminal, the recipient's identity is verified by some means (such as a photograph, personal identification number, or signature), and the benefits are given in the form of cash, food stamps, or food items. The benefits are disbursed from an account of the governmental entity paying the benefits, not an account established by or in the control of the consumer. Are these transactions subject to Regulation E?

A. No, since there is no debit or credit to a consumer asset account. (See questions 2–4 and 2–12.) (§ 205.2(b) and (g))

Q2–13: *Fund transfer—withdrawal at another institution.* A financial institution issues an identification card to its customer for use at other financial institutions. To obtain funds, the consumer presents the card and signs a withdrawal authorization at the remote financial institution, which obtains approval by telephone from the account-holding institution before disbursing the funds to the consumer. The consumer's account is memo-posted for the designated amount, but debiting of the consumer's account does not occur until the account-holding institution receives the signed withdrawal authorization. Is this an electronic fund transfer?

A: No, because the fund transfer is initiated by the consumer by paper means. (§ 205.2(g))

Q2–14: *Fund transfer—check truncation.* Are check truncation systems covered?

A: No, because the fund transfer is initiated by check, draft, or similar paper instrument. (§ 205.2(g))

Q2–15: *Fund transfer—payee information, nonelectronic form.* If the payor provides the payee information (names, account numbers, and amount of individual credits) to the financial institution holding the payees' accounts by means of a paper listing and the institution then prepares MICR-encoded deposit slips, are these transfers subject to the regulation?

A: These transfers are not electronic fund transfers for purposes of the regulation. (§ 205.2(g))

Q2–16: *Fund transfer—composite checks.* An employer or other payor delivers a composite check made payable to a financial institution for crediting to consumers' accounts at the institution. The payee information is contained on magnetic tape. Are these transfers subject to the regulation?

A: No, these transfers are not electronic fund transfers. (§ 205.2(g))

Q2–17: *Fund transfer—ACH.* If the financial institution in question 2–16 holds only some of the consumers' accounts and forwards the remaining credits to other institutions via an automated clearing house (ACH), are the subsequent transfers subject to the regulation?

A: Yes. The transfers made via the ACH are electronic fund transfers and are covered. (§ 205.2(g))

Q2–18: *Fund transfer—Social Security deposits, correspondent bank.* Under the U.S. Treasury's direct-deposit program, Social Security benefits are sent via the ACH to the consumer's financial institution. Some institutions receive fund transfers through a correspondent bank, which sends a computer printout listing the payees and the payment amounts, together with a composite check payable to the financial institution. Are these transfers subject to the regulation?

A: Yes. Transfers made via the ACH are electronic fund transfers. (§ 205.2(g))

Q2–19: *Fund transfer—preauthorized debits by magnetic tape/composite check.* A company obtains authorization from consumers to

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debit their accounts periodically. The financial institution debits the consumers' accounts in accordance with billing information contained on magnetic tape provided by the payee and sends the payee a composite check. Are these transfers subject to the regulation?

A: Yes, they are electronic fund transfers. (§ 205.2(g))

Q2–20: *Fund transfer—preauthorized debits by paper drafts, ACH.* A consumer authorizes a company to debit an account automatically for a payment. The company presents a paper draft that ultimately is debited against the consumer's account at the financial institution. Is the transfer subject to the regulation? What if the transfer is instead initiated through an ACH?

A: A transfer initiated by a draft drawn against the consumer's account is not an electronic fund transfer. Transfers via the ACH, on the other hand, are subject to the regulation. (§ 205.2(g))

Q2–21: *Fund transfer—preauthorized debits by individual checks.* A consumer signs an agreement authorizing the financial institution to make recurring payments to another party from the consumer's account or to make recurring interest payments to the consumer. The institution periodically generates an individual check to the payee by computer. Are these transfers subject to the regulation?

A: No. The transfers are initiated by check (even though the check is computer-generated) and are exempt. (§ 205.2(g))

Q2–21.5: *Fund transfer—debit card transaction.* A consumer uses a debit card to purchase goods or services or to obtain cash. The card is used to generate a sales slip and no electronic terminal is involved. The consumer's asset account is later debited for the amount of the transaction. Is this transfer subject to the regulation?

A. Yes. The definition of "electronic fund transfer" covers transfers resulting from debit-card transactions whether or not an electronic terminal is involved at the time of the transaction. (See question 2–24.) (§ 205.2(g))

Q2–22: *Electronic terminal—telephone bill payment.* If a consumer uses a pay-by-phone plan to initiate a payment, must the financial institution provide a terminal receipt?

A: No. A telephone is not an electronic terminal for purposes of the receipt requirement, although the transfer itself is subject to the regulation. (§ 205.2(h))

Q2–23: *Home terminals.* Some financial institutions offer home banking services to their customers. The service will typically involve the use, for example, of a home computer terminal or a television set that is linked to the financial institution's computer by means of telephone or cable-television lines. Does the in-home equipment used by the consumer to initiate fund transfers qualify as an electronic terminal, and are the transfers subject to the terminal receipt requirement?

A: Any transfer, to or from the consumer's asset account, that is initiated by means of the home banking equipment is an electronic fund transfer and is subject to the regulation. However, although not expressly excluded from the definition of "electronic terminal," the home banking equipment used by the consumer for initiating fund transfers is analogous to a telephone in function. The home banking terminal is therefore similarly excepted from the electronic terminal definition and is not subject to the terminal receipt requirement. (§ 205.2(h))

Q2–24: *Point-of-sale terminals.* Does the regulation cover POS transactions in which the consumer presents an access device such as a debit card, and does the terminal-receipt requirement apply?

A: The regulation applies to all transfers resulting from debit-card transactions at point of sale whether or not an electronic terminal is involved. However, if there is no electronic

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terminal, a terminal receipt is not required and the periodic statement need not disclose terminal location. Point-of-sale terminals are electronic terminals for purposes of the regulation if they capture data electronically, for debiting or crediting to the consumer's asset account, using the consumer's access device—for example, when the consumer's personal identification number is required, in part, to activate the terminal. (See question 2–21.5. Also see section 205.11(c)(4) regarding the extension of certain error-resolution deadlines.) (§§ 205.2(h) and 205.9(a))

Q2–25: *Teller-operated terminals.* Does "electronic terminal" include a computer terminal operated by a teller or other employee of a financial institution, for purposes of the terminal receipt requirement?

A: "Electronic terminal" does not generally include computer equipment operated by a financial institution's employees or used internally by the financial institution to process transfers. However, transfers initiated at such terminals by means of the consumer's access device (using the consumer's personal identification number, for example) are electronic fund transfers and are subject to other requirements of the regulation. If the access device is used only for identification purposes or for determining the account balance, on the other hand, the transfers are not electronic fund transfers for purposes of the regulation. (§ 205.2(h))

Q2–25.5: *Card-activated telephones.* Does the regulation cover transfers to pay for calls made from a telephone that is activated when the consumer inserts a card into a magnetic strip or card reader, and does the terminal-receipt requirement apply?

A: The regulation applies to transfers initiated electronically. As a result, the electronic transfers from a consumer's account to pay for telephone calls are covered by the regulation as electronic fund transfers. A receipt is not required provided the only transfer of funds occurring as a result of the use of the card at the combination telephone/reader is to pay for the charges incurred by use of the telephone. (§ 205.2(h))

Q2–26: *Unauthorized transfer by institution's employee.* A financial institution's employee fraudulently takes money from a consumer's account by electronic means. Is the consumer liable for these transfers?

A: No. Unauthorized electronic fund transfers exclude any transfer initiated by the financial institution or its employees. The regulation's liability provisions do not apply and the consumer has no liability for such transfers. (§§ 205.2(*l*) and 205.6)

Q2–27: *Unauthorized transfers—access device obtained from the consumer.* A consumer is robbed or induced by fraud to furnish another person with an access device. Are transfers initiated at an ATM by the person who obtained the access device from the consumer "unauthorized electronic fund transfers"?

A: The transfers are unauthorized for purposes of Regulation E. Although the definition of "unauthorized electronic fund transfer" excludes any transfer initiated by a person "who was furnished with the access device to the consumer's account by the consumer," it assumes that the consumer has authorized the person to make transfers with the access device. This exclusion does not apply when the access device is "furnished" as the result of a robbery, or as the result of a fraud on the consumer in which the consumer does not authorize the use of the access device to make transfers, but if the consumer furnishes an access device and grants actual authority to make transfers to another person (a family member or co-worker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the financial institution has been notified that transfers by that person are no longer authorized. (§ 205.2(*l*))

Q2–28: *Unauthorized transfers—forced initiation.* A consumer is forced by a robber (at gunpoint, for example) to withdraw cash at an ATM. Do the liability limits for unauthorized transfers apply?

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A: Yes. The transfer is unauthorized for purposes of Regulation E. Under these circumstances, the actions of the robber are tantamount to use of a stolen access device. (§§ 205.2(*l*) and 205.6)

SECTION 205.3—Exemptions

Q3–1: *Check guarantee/authorization—memo posting.* A consumer's account is memo-posted electronically at the time a payment to a third party is guaranteed or authorized under a check-guarantee or -authorization service, but the financial institution does not pay out the funds until the check is received. Is the service exempt?

A: Yes. Although a temporary hold is placed on the funds in the consumer's account, the guarantee does not result in a direct debit to the account. Debiting occurs when the check or draft is presented for collection. (§ 205.3(a))

Q3–2: *Wire transfer—instructions on magnetic tape.* If a transfer of funds to a financial institution is sent by Fedwire or a similar network and the instructions for crediting individual consumers' accounts are transmitted on magnetic tape, are the transfers exempt?

A: Yes. A Fedwire or similar transfer of funds is exempt. (§ 205.3(b))

Q3–3: *Wire transfer—followed by ACH transfers.* A company sends funds by Fedwire or a similar network from one financial institution to another, and transfers via ACH are then made from the second institution to the accounts of company employees at still other institutions. Are the subsequent transfers exempt?

A: No. Although the Fedwire transfer is exempt, the ACH transfers to employees' accounts are subject to the regulation. (§§ 205.3(b) and 205.2(g))

Q3–3.5: *Securities exemption—asset-management accounts.* Some consumer financial services include both an electronic fund transfer service and the purchase and sale of securities. An example is a program involving a debit card issued by a bank or other card issuer which the consumer uses to purchase goods or services, and a money market mutual fund held by a broker. Debits are processed by the card issuer and transmitted to the broker for payment from the money market mutual fund. Are such transfers exempt from coverage under the securities exemption?

A: No. The exemption applies only to transfers whose "primary purpose" is the purchase or sale of securities—for example, a telephone order to a stockbroker to buy or sell securities. It does not apply to transfers resulting from use of the card for the purchase of goods or services or to obtain cash. (A transaction involving the purchase or sale of securities also remains subject to the Board's margin requirements under Regulation T (12 CFR 220) and other applicable securities regulations.) (§ 205.3(c))

Q3–3.6: *Payment of dividends or interest on securities.* A payment of interest or dividends on securities is made by electronic fund transfer into a consumer's account. The payment may be made, for example, by a discount brokerage firm into an account at an affiliated depository institution or, for government securities, by a Federal Reserve Bank into the consumer's account at a depository institution. Is the transfer covered by Regulation E?

A: Yes. The securities exemption does not apply since there is no purchase or sale of securities. (§ 205.3(c))

Q3–4: *Telephone transfer plans—applicability of intrainstitutional exemption.* A consumer calls a financial institution, under a telephone transfer plan, to request a transfer of funds from a savings to a checking account. Does the exemption for automatic intrainstitutional transfers apply?

A: No, because even though the transfer is between the consumer's accounts at the same institution, it occurs under a telephone transfer plan. (See question 3–17.) (§ 205.3(d))

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Q3–5: *Compulsory use—preauthorized loan payments.* Preauthorized loan payments to the institution in which the consumer holds an account are exempt from the act and regulation generally but are subject to the statutory prohibition against requiring repayment by means of preauthorized electronic fund transfers. If an institution required automatic payment by electronic means on credit agreements made before May 10, 1980, must the institution now offer those consumers an alternative means of repayment?

A: No, it is not necessary to do so. However, if a consumer who entered into such an agreement now asks to repay by other than electronic means, the financial institution should honor the request. (§ 205.3(d)(3), § 913)

Q3–6: *Compulsory use—salary payments.* Preauthorized transfers from a financial institution to a consumer's account at the same institution are exempt from the act and regulation generally but are subject to the statutory prohibition against requiring an employee (as a condition of employment) to receive payroll deposits by electronic means at a particular institution. Does this prohibition apply to a financial institution as an employer?

A: Yes. The prohibition applies to all employers, including financial institutions. To comply with the law, an employer could, for example, give its employees a choice of the method of receiving payment—letting the employee choose between having pay deposited at a particular institution, or receiving payment by check or cash. Or, an employer could mandate payment by electronic means but allow the employee to choose the institution to receive direct deposits.

As in the case of preauthorized loan payments, the compulsory-use prohibition does not require an employer to offer alternative means of payment to employees who agreed to electronic deposits at a particular financial institution before May 10, 1980. However, if an employee asks to terminate this arrangement, the employer should honor the request. (§ 205.3(d)(2), § 913)

Q3–7: *Compulsory use—payments from pledged savings.* Under certain types of graduated-payment mortgages, a pledged savings account is used to supplement the monthly payments made by the borrower during an initial term—for example, in the first five years of the loan. The lender debits the pledged account automatically for the prescribed sum each month. That automatic transfer of funds is an integral feature of this type of alternative mortgage. Does the prohibition against compulsory use of electronic fund transfers bar this type of program?

A: No. The legislative history of the prohibition against compulsory use makes clear that it is permissible to offer a reduced annual percentage rate or some other cost-related incentive for an automatic repayment feature. The special terms of the pledged-account mortgage appear to be such an incentive. (§ 205.3(d)(3), § 913)

Q3–7.5: *Compulsory use—biweekly loan programs.* A lender offers consumers the option of a mortgage or other loan involving biweekly payments. Use of this option results in a somewhat lower total finance charge than a plan involving monthly payments. An integral part of this option is a requirement that consumers make the biweekly payments by preauthorized electronic fund transfers. Does this requirement violate the act's prohibition against compulsory use of electronic fund transfers?

A: No, because the biweekly repayment plan is optional and because the lower finance charge resulting from the more frequent payments offers a cost-related incentive. (§ 205.3(d)(3), § 913)

Q3–8: *Automatic transfers—to joint account holder; to family member.* A consumer authorizes a financial institution to make periodic transfers from the consumer's account to an account held jointly with another consumer at the same institution. Are these transfers exempt? What about transfers to a family member's account?

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A: Automatic transfers between a consumer's accounts within a financial institution are exempt; there need not be complete identity of account holders on the two accounts. Intrafamily transfers that occur automatically within a financial institution are also exempt. (§ 205.3(d)(1) and (4))

Q3–9: *Automatic transfers—stop-payment charges; other items.* A financial institution electronically debits or credits consumer accounts for stop-payment charges, NSF charges, overdraft charges, provisional recredits, error adjustments, and similar items. Are these transfers exempt?

A: Yes. These are intrainstitutional transfers that are initiated by the financial institution automatically, on the occurrence of certain events. (§ 205.3(d))

Q3–10: *Automatic transfers—group life insurance.* A financial institution offers group life insurance coverage to its account holders. The insurance can be obtained only through the financial institution, and the premiums can be paid only by means of an aggregate payment from the financial institution. Consumers' accounts are debited for their share of the premiums, and the financial institution makes payment on behalf of participating account holders for the total premium due under the group policy. Are these transfers exempt?

A: Yes. The debit to an individual consumer's account is an automatic transfer to an account of the financial institution. Because the group insurance can be obtained only through the institution, the transfer can be regarded as a bona fide intrainstitutional transfer, even though the funds are ultimately transferred to a third party. (§ 205.3(d)(3))

Q3–11: *Automatic transfers—check order charges.* Check order charges are electronically debited to an account at the consumer's request. Checks can only be obtained and paid for through the financial institution. Are these transfers exempt?

A: Yes. (§ 205.3(d)(3))

Q3–12: *Automatic transfers—paired institutions in Rhode Island.* Rhode Island has a banking system that sanctions the pairing of a thrift institution with a commercial bank. The paired institutions frequently share quarters and have common tellers and teller stations. Customers receive a unified statement that distinguishes the two accounts by number and type, but not by institution. Are transfers that occur within the thrift-commercial pair intrainstitutional transfers for purposes of the exemption for automatic transfers?

A: Yes. Under the unique circumstances that exist in Rhode Island, transfers within the paired institutions qualify for intrainstitutional status. (§ 205.3(d))

Q3–13: *Automatic transfers—affiliated institutions.* Does a transfer to or from an account of the consumer at a subsidiary institution (or within the same holding company) qualify as an intrainstitutional transfer?

A: No. (§ 205.3(d))

Q3–14: *Telephone transfer plan—existence of plan.* A financial institution transfers funds in response to a consumer's telephone request. Is the transfer subject to the regulation?

A: The transfer is an electronic fund transfer for purposes of the regulation if it occurs under a written plan or agreement between the consumer and the financial institution. In the absence of a written plan or agreement, telephone transfers that are made as an accommodation to the consumer are not covered. (§ 205.3(e))

Q3–15: *Telephone transfers—existence of plan; signature card.* A signature card signed by the consumer when the account was established contains a clause authorizing the financial institution to honor the consumer's telephone request for fund transfers. It is basically a hold-harmless agreement for the institution's

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behalf in the event the consumer requests and the institution agrees, at the time of the request, to make the transfer. Does the signature card constitute a written agreement?

A: A hold-harmless authorization on a signature card does not, by itself, constitute a written plan or agreement for purposes of the regulation. (§ 205.3(e))

Q3–16: *Telephone transfers—existence of plan; limits for Regulation D purposes.* In order to comply with Regulation D (Reserve Requirements of Depository Institutions), an institution prints a legend on a signature card or periodic statement or in a passbook, limiting the number of telephone transfers that the consumer can make from a savings account. Is this deemed to constitute a written plan?

A: No. The legend serves as a limitation on the account and does not, by itself, constitute a written plan or agreement. (§ 205.3(e))

Q3–17: *Telephone transfer plan—manual completion.* A consumer signs a telephone transfer agreement authorizing the financial institution to transfer funds between accounts within the institution. To initiate a transfer, the consumer telephones an employee of the institution, who then completes the transfer manually by means of debit memos, deposit slips, etc. Is the transfer exempt?

A: No. The transfer is initiated by telephone under a telephone transfer plan and is therefore covered. The fact that the transfer is completed manually does not change this result. (See question 3–4.) (§§ 205.3(e) and 205.2(g))

Q3–18: *Telephone transfer plan—individual transfers.* A financial institution's telephone transfer plan requires the consumer to make a separate request for each transfer from the consumer's account. That is, the consumer cannot authorize successive periodic payments to the designated payee by means of a single telephone call. Is this plan exempt?

A: No. The plan is covered. Even though the consumer cannot authorize recurring payments by means of one telephone request, there is an agreement that permits the consumer to initiate transfers from time to time. (§ 205.3(e))

Q3–19: *Telephone transfer plans—frequency of use.* Many consumers who sign up for a telephone transfer plan use it only occasionally, others not at all. Are transfers under the plan exempt, since the institution does not know when (or whether) a telephone transfer will be made?

A: No. Transfers under the plan are not exempt, because any transfer that does occur will be occurring under the prearranged plan. (§ 205.3(e))

Q3–19.5: *Telephone transfers—money market deposit accounts, retail repurchase agreements.* Are telephone transfers between a money market deposit account (or a retail repo account) and another account within the institution subject to the regulation?

A: The answer depends on whether the transfers are made pursuant to a written plan or agreement in which periodic or recurring transfers are contemplated. An agreement that merely permits the consumer to telephone institutions for the rollover of all or a portion of the funds at maturity does not meet this test. (§ 205.3(e))

Q3–20: *Trust accounts—IRAs under custodial agreements.* A financial institution holds certain individual retirement accounts (IRAs) under custodial agreements. The custodial agreement is identical to a trust agreement, except that the parties are identified as depositor and custodian, rather than as grantor and trustee. Under the Internal Revenue Code, these accounts qualify as trusts so long as they otherwise meet the requirements for an IRA. Do these custodial accounts qualify for the regulation's exemption for trust accounts?

A: Yes. So long as the custodial agreements are the functional equivalent of trust agreements, they are exempt. (§ 205.3(f))

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Q3–21: *Trust accounts—bona fide trust agreement.* What is a bona fide trust agreement?

A: The term is not defined by the act or regulation. Financial institutions must therefore look to state or other law. The Board and the staff will not make determinations in individual cases. (§ 205.3(f))

Q3–22: *Small-institution exemption—grace period.* If the assets of a previously exempt financial institution exceed $25 million on December 31, when must the institution begin complying with the regulation?

A: Such an institution would have a one-year grace period. For example, if the assets exceed $25 million on December 31, 1983, compliance is not required until January 1, 1985. On the other hand, a previously covered institution whose assets fall below $25 million on December 31, 1983 may take advantage of the exemption beginning on January 1, 1984. (§ 205.3(g))

SECTION 205.4—Special Requirements

Q4–1: *Shared system—scope of disclosures.* In a shared system, must an institution's initial disclosures include EFT charges and frequency or dollar limitations imposed by other institutions in the system, to the extent that the institution knows what these are?

A: No, because this information is not within the purview of the institution's relationship with its customer. (§§ 205.4(a), 205.7(a))

Q4–2: *Shared system—disclosures on behalf of another institution.* If Institution B is making disclosures on behalf of Institution A, which holds a consumer's account, may B limit the disclosures to those within its own knowledge?

A: No. The responsibility for making disclosures rests with the account-holding institution. The disclosures B makes for A (if A's responsibility is to be met) must include information within A's knowledge and the purview of A's relationship with A's customers. For example, B would disclose any electronic fund transfer charges imposed by A. (§ 205.4(a))

Q4–3: *Multiple accounts and account holders.* If X and Y open a joint checking account and a joint savings account at Institution A, how many disclosure statements must A provide?

A: One, provided it covers terms and conditions on both accounts. The disclosure can be given to either X or Y. (§ 205.4(b))

SECTION 205.5—Issuance of Access Devices

Q5–1: *Renewal or substitution—one-for-one rule.* When an institution issues a renewal or substitute device, may it send more than one in place of the existing device?

A: No. For example, only one new card and personal identification number (PIN) may be issued to replace a card and PIN previously issued. (§ 205.5(a)(2))

Q5–1.5: *Issuance—addition of new accounts.* A consumer has been issued an access device for accessing an asset account. The account-holding institution wants to make an additional account accessible to the consumer by means of the same access device. May the institution do so without a request by the consumer?

A: No. Making an additional account accessible through an existing access device is equivalent to issuing an access device for that account and is subject to the unsolicited-issuance provisions. (Additional disclosures may be required in some circumstances. See question 7–5.5) (§ 205.5(a)(1))

Q5–2: *Renewal or substitution—change in services.* Must a renewal or substitute access device permit exactly the same types of electronic fund transfers as the original?

A: No. The renewal or substitute device may permit the same, additional, or fewer types. If a new type is added, new disclosures may be

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required. (See question 7–6.) If fewer types of transfers are possible, a change-in-terms notice is required. (§§ 205.5(a)(2), 205.7(a), and 205.8(a))

Q5–3: *Renewal or substitution—successor institution.* Must a successor financial institution be an entity that replaced the original financial institution (for example, through a corporate merger or acquisition)?

A: No. A successor could also include, for example, a party that acquires accounts or takes over the operation of an EFT system. (§ 205.5(a)(2))

Q5–4: *Renewal or substitution—pre-February 8, 1979 device.* If an institution issued an access device on an unsolicited basis before February 8, 1979 (the effective date of the act's restrictions on unsolicited issuance), may the institution now issue a validated renewal or substitute device, or may it do so only after receiving a request from the consumer?

A: If an institution does not know whether the unsolicited device became "accepted," it may issue a validated renewal or substitute device for a pre-February 2, 1979 device, provided certain disclosures accompany the renewal or substitute device. The renewal or substitute device does not become "accepted"—and the consumer can incur no liability for unauthorized use—until the consumer uses or signs it, or authorizes someone else to use it. (§ 205.5(a)(3))

Q5–4.5: *Unsolicited issuance—PINs.* May a financial institution issue, without a specific request, validated personal identification numbers (PINs), thus allowing consumers to use their existing debit cards at automated teller machines or at merchant locations with POS terminals that require PINs?

A: Yes. A validated PIN may be issued to an existing debit-card holder without a specific request provided the PIN cannot be used alone to make an electronic fund transfer. The institution may impose no liability on the consumer for unauthorized transfers involving use of the PIN, however, until this new combination of debit card and PIN becomes an "accepted access device" under the regulation. The card-PIN combination can be treated as an accepted access device, for example, if the card and PIN have been used and the consumer does not dispute having used them. (§§ 205.5(a) and 205.2(a))

Q5–5: *Unsolicited issuance—functions of PIN.* If an institution issues a personal identification number at the consumer's request, could this issuance constitute both (1) a way of validating the debit card and (2) the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers)?

A: Yes. (§§ 205.5(b), 205.6(a)(2))

Q5–6: *Unsolicited issuance—example of noncomplying method.* An institution issues an unsolicited debit card and PIN to a consumer, thus enabling the consumer to initiate electronic fund transfers. The institution instructs the consumer *not* to use the card and PIN until the consumer has come to an office of the institution for verification of the consumer's identity. Does this procedure comply with the regulation?

A: No. In this case, the consumer could in fact use the card and PIN to initiate transfers (even though instructed not to do so); thus, the institution has not met the requirement that an unsolicited access device be unvalidated when issued. (§ 205.5(b)(1))

Q5–7: *Unsolicited issuance—example of complying method.* Same facts as in question 5–6, except that the institution's ATM system is initially programmed not to accept the consumer's card and PIN. After the consumer has requested validation of the card, the institution reprograms its computer so that the card and PIN now work in the system. Does this validation procedure comply with the regulation?

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A: Yes, provided the institution verifies the consumer's identity by some reasonable means before reprogramming. (§ 205.5(b)(4))

Q5–8: *Unsolicited issuance—verification of identity.* Must an institution verify identity by one of the methods listed in the regulation?

A: No, they are merely examples. Any reasonable means of verifying identity will comply. Even if an institution uses reasonable means, however, if it fails to verify identity correctly—so that an imposter succeeds in having a device validated—the consumer is not liable for any unauthorized transfers from the consumer's account. (§§ 205.5(b)(4), 205.2(a)(2), and 205.6(a)(1))

Q5–9: *Unsolicited issuance—access device with overdraft feature.* The regulation permits the unsolicited issuance of an access device. Under this provision, may an institution issue a combined credit card/access device to a consumer, without a request or application for the card?

A: Yes, provided that (1) the only credit feature is a preexisting overdraft credit line attached to the consumer asset account (or a similar line of credit that maintains a specified minimum balance in the account), and (2) the institution complies with the regulation's procedures for an unsolicited issuance. (§ 205.5(c)(1)(iii))

Q5–10: *Unsolicited issuance—other combined credit card/access devices.* Does the answer to question 5–9 mean that an institution is prohibited from issuing, on an unsolicited basis, any other type of combined credit card/access device?

A: No. Section 226.12(a)(1) of Regulation Z (Truth in Lending) permits creditors to issue, on an unsolicited basis, a card that may become a credit card provided that (1) the card at the time of issuance has a substantive purpose other than obtaining credit and cannot be used as a credit card and (2) any credit privilege that subsequently attaches is attached only upon the consumer's request. (The substantive purpose could be to initiate electronic fund transfers.) The rules of Regulation E on unsolicited issuance of access devices will, of course, continue to apply. (§§ 205.5(c)(2)(iii) and (b))

SECTION 205.6—Liability of Consumer for Unauthorized Transfers

Q6–1: *Unauthorized transfers—access device not involved.* If unauthorized transfers do not involve the use of an access device such as a debit card, may any liability be imposed on the consumer?

A: If the consumer fails to report an unauthorized electronic fund transfer within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability. (See questions 2–26 and 7–7.) (§ 205.6(a) and (b))

Q6–2: *Failure to disclose business days.* If a financial institution meets other conditions (including disclosure of liability) but fails to disclose its business days, can it hold the consumer liable for unauthorized transfers involving a lost or stolen access device?

A: No, unless applicable state law or an agreement between the consumer and the financial institution sets a liability limit of $50 or less. (§ 205.6(a)(3)(iii))

Q6–3: *Means of identification—multiple users.* If more than one access device is issued to access a particular consumer account, must the financial institution provide a means to identify each separate user in order to impose liability for unauthorized transfers?

A: No. The financial institution may provide means to identify the separate users but is not required to do so. (§ 205.6(a)(2))

Q6–4: *Means of identification—use of PIN.* Does the use of a personal identification number (PIN) or other alphabetical or numerical

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code satisfy the requirement of electronic or mechanical confirmation for identifying the consumer to whom an access device was issued?

A: Yes. (§ 205.6(a)(2))

Q6–5: *Application of liability provisions—examples.* What are some examples of when and how the following would apply: (1) the $500 liability limit provision, (2) both the $500 limit and the unlimited liability provisions, and (3) only the $50/unlimited liability provisions? (§ 205.6(b)(1), (2) and (3))

A: Situation 1—$500 Limit Applies

Date	*Event*
June 1	C's card is stolen.
June 2	$100 unauthorized transfer.
June 3	C learns of theft.
June 4	$25 unauthorized transfer.
June 5	Close of two business days.
June 7-8	$600 in unauthorized transfers that could have been prevented had notice been given by June 5.
June 9	C notifies bank.

Computation of C's liability:
Paragraph (b)(1) will apply to determine C's liability for any unauthorized transfers that occur before notice is given.

	C's liability:
Amount of transfers before close of two business days: $125	$ 50 (maximum liability for this period)
Amount of transfers, after close of two business days and before notice to institution, that would not have occurred but for C's failure to notify within two business days: $600	$450 (because maximum liability is $500)
C's total liability	$500

Situation 2—Both $500 and Unlimited Liability Provisions Apply

Date	*Event*
June 1	C's card is stolen.
June 3	C learns of theft.
June 5	Close of two business days.
June 7	$200 unauthorized transfer that could have been prevented had notice been given by June 5.
June 10	Periodic statement is transmitted to C (for period from May 10 to June 9).
June 15	$200 unauthorized transfer that could have been prevented had notice been given by June 5.
July 10	Periodic statement of C's account is transmitted to C (for period from June 10 to July 9).
August 4	$300 unauthorized transfer that could have been prevented had notice been given by June 5.
August 9	Close of 60 days after transmittal of statement showing unauthorized transfer.
August 10	Periodic statement of C's account is transmitted to C (for period from July 10 to August 9).
August 15	$100 unauthorized transfer that could have been prevented had notice been given by August 9.
August 20	C notifies bank.

Computation of C's liability:

Paragraph (b)(1) will apply to determine C's liability for unauthorized transfers that appear on the periodic statement and unauthorized transfers that occur before the close of the 60-day period. (The transfers need not both appear on the periodic statement *and* occur before the close of the 60-day period.) The maximum liability under (b)(1) is $500.

	C's liability:
Amount of transfers before close of two business days: $0	$ 0
Amount of transfers, after close of two business days and before close of 60-day period, that would not have occurred but for C's failure to notify within two business days: $700	$500 (maximum liability)

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Paragraph (b)(2)(ii) will apply to determine C's liability for transfers occurring after the close of the 60-day period. There is no dollar ceiling on liability under paragraph (b)(2)(ii).

Amount of transfers, after close of 60 days and before notice, that would not have occurred but for C's failure to notify within 60 days: $100	$100
C's total liability:	$600

Situation 3—$50/Unlimited Liability Provisions Apply

Facts same as in situation 2, except that C does not learn of the card theft, but questions the account balance and notifies bank on August 20 of possible unauthorized transfers.

Computation of C's liability

In this situation only paragraph (b)(2) applies.

	C's liability:	
Amount of transfers appearing on the periodic statement or occurring during the 60-day period: $700	$ 50	(maximum liability for this period)
Amount of transfers, after close of 60-day period and before notice, that would not have occurred but for C's failure to notify within 60 days: $100	$100	
C's total liability:	$150	

Q6–6: *Knowledge of loss or theft of access device.* May a financial institution treat the consumer's receipt of a periodic statement that reflects unauthorized transfers as establishing that the consumer had knowledge of loss or theft of the access device?

A: Receipt of the periodic statement reflecting unauthorized transfers may be considered a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge. (§ 205.6(b))

Q6–6.5: *Consumer negligence.* A consumer writes the PIN on the ATM card or on a piece of paper kept with the card—actions that may constitute negligence under state law. Do such actions affect the liability for unauthorized transfers that may be imposed on the consumer?

A: No. The extent of the consumer's liability is determined by the promptness in reporting loss or theft of an access device or unauthorized transfers appearing on a periodic statement. Negligence on the consumer's part cannot be taken into account to impose greater liability than is permissible under the act and Regulation E. (§ 205.6(b))

Q6–7: *Notice of loss or theft.* The consumer gives notice at an address or telephone number other than that specified by the financial institution. Is the notice valid for purposes of limiting the consumer's liability?

A: Yes. The institution has received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner at some other address or telephone number of the institution. (§ 205.6(c))

Q6–8: *Notice of loss or theft—content of notice.* The regulation refers to the consumer's taking such steps as are reasonably necessary to provide the financial institution with the pertinent information about the loss or theft of an access device. If a consumer is unable to furnish the institution with an account number or card number when reporting a lost or stolen access device, has the consumer given adequate notice?

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A: Yes. In instances where the consumer is unable to provide the number, the notice is still valid for purposes of limiting the consumer's liability if the notification otherwise sufficiently identifies the account in question. Such a situation could arise, for example, if the consumer's wallet is stolen and the consumer is away from home. (§ 205.6(c))

Q6–9: *Applicable liability provisions—cash advances from credit line.* A credit card that is also an access device is used to obtain unauthorized cash advances from a line of credit at an automated teller machine. Do the consumer liability provisions of Regulation E, or those of Regulation Z, apply?

A: Regulation Z applies. Since the unauthorized cash advances do not involve a consumer asset account, an electronic fund transfer has not occurred that would make the transaction subject to Regulation E. (§ 205.6(d)(2))

Q6–10: *Applicable liability provisions—checking account with overdraft feature.* If the unauthorized transfers in question 6–9 were instead withdrawals from a checking account and they resulted in cash advances from an overdraft line of credit, which liability provisions apply?

A: Regulation E applies, because the transfer was an electronic fund transfer; there was an extension of credit only as a consequence of the overdraft protection feature on the checking account. (§ 205.6(d)(1))

Q6–11: *Applicable liability provisions—withdrawals from checking account/credit line.* If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from the checking account and, separately, to obtain cash advances directly from the line of credit, which liability provisions apply?

A: Both Regulation E and Regulation Z apply. Regulation E would apply to the unauthorized transfers involving the checking account, while Regulation Z would apply to the transfers involving the credit line. As a result, a consumer might be liable for up to $50 under Regulation Z and, in addition, for $50, $500, or an unlimited amount under Regulation E. (§ 205.6(d))

SECTION 205.7—Initial Disclosure of Terms and Conditions

Q7–1: *Timing of disclosures—early disclosure.* An institution is required to give initial disclosures either (1) when the consumer contracts for an EFT service or (2) before the first electronic fund transfer to or from the consumer's account. If an institution provides initial disclosures when a consumer opens a checking account and the consumer does not sign up for an EFT service until a later time, has the institution satisfied the disclosure requirements?

A: Yes, if the EFT contract is between the consumer and a third party for preauthorized electronic transfers to be initiated by the third party to or from the consumer's account. In this case, the financial institution need not repeat disclosures previously given unless the terms and conditions required to be disclosed are different from those that were given.

If, on the other hand, the EFT contract is directly between the consumer and the financial institution—for the issuance of an access device, or for a telephone bill-payment plan, for example—the institution should provide the disclosures at the time of contracting. Disclosures given before the time of contracting will satisfy the regulation only if they occurred in close proximity thereto. (§ 205.7(a))

Q7–2: *Timing of disclosures—Social Security and other government direct deposits.* In the case of direct deposits by a government agency—Social Security payments, for example—how can the financial institution comply with the disclosure requirements absent prenotification, such as in cases where the government agency no longer uses Form 1199A?

A: Before direct deposit of payments such as Social Security takes place, usually the consumer and the institution both must complete a Form 1199A, and the institution can make disclosures at that time. However, if a Form

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1199A (or a comparable form providing notice to the institution) is not used and there is no prenotification, the institution should provide the required disclosures as soon as reasonably possible after the first direct deposit is received, unless the institution has previously given the disclosures (see question 7–1). (§ 205.7(a))

Q7–3: *Form of disclosures.* Are there special rules for disclosure statements concerning such matters as type size, number of pages, or the relative conspicuousness of various terms?

A: No. The regulation imposes no requirements concerning matters of form, although it does specify that the disclosures must be given in a readily understandable written statement that the consumer may retain. (§ 205.7(a))

Q7–4: *Spanish language disclosures.* In Puerto Rico, where communications normally are in Spanish, may a financial institution provide the required disclosures in Spanish?

A: Yes, disclosures in Spanish will satisfy the readily understandable requirement, provided that disclosures in English are given to consumers who request them. (§ 205.7(a))

Q7–5: *Disclosures covering all EFT services offered.* Must the disclosure statement given to a consumer relate only to the particular EFT services that the consumer will receive?

A: An institution may provide a disclosure statement covering all the EFT services that the institution offers, even if some consumers receiving the disclosures have not arranged to use all the services. (§ 205.7(a))

Q.7–5.5: *Addition of new accounts.* A consumer arranges for electronic fund transfers to and from an account and receives disclosures. Later, the consumer arranges for transfers involving an additional account at the same financial institution. Does the addition of the new account require further disclosures?

A: The addition of a new account would require the institution to furnish any of the required disclosures that differ from those previously given. (See questions 5–1.5 and 7–6). (§ 205.7(a))

Q7–6: *Addition of new EFT services.* A consumer signs up for an EFT service and receives disclosures. If the consumer later arranges for other EFT services from the same institution, must additional disclosures be given?

A: Yes, if the new service is subject to terms and conditions different from those given in the initial disclosures. Only the disclosures for the additional service need be given. This is also the case if the institution begins to furnish a new service upon renewal of an access device. (See question 5–2.) (§ 205.7(a))

Q7–6.5: *Addition of service—in interchange systems.* A financial institution operates electronic terminals through which consumers can access their accounts and gives the required disclosures regarding the service. Later, the institution joins an interchange or shared system of terminals, giving consumers access to terminals operated by other institutions in the system. Are new disclosures required?

A: The institution must provide any of the required disclosures that differ from those previously given. (§ 205.7(a))

Q7–7: *Disclosures about unauthorized transfers—preauthorized transfers.* If the only electronic fund transfers from an account are preauthorized transfers, must the institution make a liability disclosure regarding unauthorized transfers and provide a telephone number and address for reporting possible unauthorized transfers?

A: Yes, unless the institution chooses not to impose any liability. The disclosure of liability should reflect that liability could exist if the consumer fails to report unauthorized transfers that are reflected on a periodic statement. (See question 6–1.) (§ 205.7(a)(1) and (2))

Q7–8: *Disclosures about unauthorized transfers—no liability imposed.* If an institution chooses not to impose any liability for unau-

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thorized electronic fund transfers, must it make any liability disclosure?

A: No; the disclosure is inapplicable. If the institution later decides to impose liability, however, it must make the liability disclosure before it can do so. (§ 205.7(a)(1) and (2))

Q7–9: *Summary disclosure of rights.* Several required disclosures relate to a consumer's rights under the act and regulation. Must the disclosures spell out these rights in full, as they are set forth in the act and regulation?

A: No. These matters can be disclosed by means of summary descriptions. (For examples showing the amount of detail that needs to be provided, see the model disclosure clauses in appendix A.) (§ 205.7(a)(1), (6), (7) and (8))

Q7–10: *Type of transfer—preauthorized transfers.* Must preauthorized transfers be disclosed as a type of electronic fund transfer that the consumer may make?

A: No. An institution need not list preauthorized transfers as one of the types of transfers that a consumer can make, although it is permissible to do so. (§ 205.7(a)(4))

Q7–11: *Limitations on transfers.* How much must the consumer be told about limitations on frequency and dollar amount of transfers?

A: The general rule is that information on these limitations must be disclosed in detail to consumers. This is so even if the limitations are related to the security aspects of the electronic fund transfer system. The regulation provides, however, that to the extent confidentiality of certain details is determined by the institution to be *essential* to the security of the account or the system, the details may be withheld—but the fact that there are limitations must be disclosed. (§ 205.7(a)(4))

Q7–11.5: *Restrictions on certain deposit accounts.* Regulation D imposes restrictions on the number of payments to third parties that may be made from a money market deposit account (whether made by electronic or nonelectronic means). If an institution chooses to implement the restrictions by refusing to execute transfers that would exceed the limit, must it disclose the restrictions under Regulation E as limitations on the frequency of electronic fund transfers?

A: Yes, limitations on account activity that restrict the consumer's ability to make electronic fund transfers must be disclosed to the consumer as part of the Regulation E disclosures. (§ 205.7(a)(4))

Q7–12: *Disclosure of charges—same per-item charge for EFT/non-EFT.* The regulation requires disclosure of charges for electronic fund transfers or for the right to make transfers. If a per-transfer charge for electronic fund transfers is the same as the per-item charge for nonelectronic transfers, must the EFT charge be disclosed?

A: Yes, such charges must be disclosed. If an institution does not wish to itemize the various charges on the disclosure statement, it may disclose them in an accompanying document given along with the principal disclosure statement. If an insert is used, the disclosure statement must refer to the accompanying document. (§ 205.7(a)(5))

Q7–13: *Disclosure of charges—charge imposed under certain conditions.* If an institution imposes per-item charges only under certain conditions (when the transactions for the cycle exceed a certain number, for example), must the institution disclose what those conditions are?

A: Yes. Again, this information may be provided in a separate document enclosed with and referenced by the EFT disclosures. (§ 205.7(a)(5))

Q7–14: *Disclosure of charges—fixed service charge.* If a fixed service charge is assessed only when the balance in the account falls below a certain minimum, must it be disclosed?

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A: No, since there is no charge attributable to an EFT service. (§ 205.7(a)(5))

Q7–15: *Disclosure of charges—stop-payment/dishonor/overdraft.* Does the regulation require disclosure of charges for stop-payment orders, dishonor, or overdrafts?

A: No. These are not charges for electronic fund transfers or for the right to make such transfers. Disclosure is permissible, however. (See model disclosure clause A(9) in appendix A.) (§ 205.7(a)(5))

Q7–15.5: *Charges—in interchange system.* Charges are imposed on the account-holding institution by the operator of a shared or interchange ATM system for the use of the system. In addition, charges may be imposed by other institutions in the system for the use of their ATMs. Must such charges be disclosed by the account-holding institution in the initial disclosures?

A: The fact that charges are imposed on the account-holding institution by the system or terminal-operating institution does not, by itself, require a disclosure to the consumer. However, the institution must disclose any charges it imposes on the consumer for EFT services, including charges for ATM transactions in an interchange or shared ATM system.

Charges for use of an ATM imposed on the consumer by an institution other than the account-holding institution are not within the purview of the account-holding institution's relationship with its customer and need not be disclosed in the initial disclosures. (See question 4–1). (§§ 205.7(a)(5) and 205.4(a))

Q7–16: *Disclosure about privacy of account information.* The regulation requires an institution to list the circumstances under which, in the ordinary course of business, it will disclose information to third parties about an account. If a consumer holds two accounts in an institution—account #1 has EFT service, but account #2 does not—does the requirement apply to both accounts?

A: The required disclosure relates only to account #1, which has an EFT service. However, the institution must describe the circumstances under which *any* information relating to that account (not just information concerning electronic fund transfers) will be made available to third parties. (§ 205.7(a)(9))

Q7–17: *Disclosure about privacy—meaning of third parties.* For purposes of this disclosure requirement, does the term "third parties" include other subsidiaries of the same holding company?

A: Yes. (§ 205.7(a)(9))

Q7–18: *Error-resolution disclosure.* The regulation contains an error-resolution notice. Is this notice a model disclosure clause that the institution may use at its option?

A: The error-resolution notice is a required disclosure and must be given in a form substantially similar to that appearing in the regulation. An institution may, however, delete inapplicable provisions (e.g., the requirement of written confirmation of an oral notification), substitute trade names, substitute substantive state law requirements that afford greater consumer protection than the regulation, or even use different wording—so long as the substance of the notice remains substantially the same. (§ 205.7(a)(10))

Q7–18.5: *Error-resolution disclosure—extended time periods.* The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States or transfers resulting from POS debit-card transactions, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which these types of transfers can be made?

A: A financial institution's error-resolution disclosures must reflect its actual procedures. An institution that takes advantage of the longer time periods applicable to POS and foreign-initiated transfers must therefore

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disclose the longer periods in its error-resolution disclosures. Similarly, an institution that relies on the exception from provisional recrediting (for accounts subject to Regulation T) must phrase its disclosures accordingly. (§§ 205.7(a)(10), 205.8(b), and 205.11(c)(3) and (c)(4))

Q7–19: *Disclosures involving telephone numbers.* Several disclosures involve telephone numbers: numbers for reporting loss or theft of an access device or possible unauthorized transfers, for inquiring about receipt of a preauthorized credit, for stopping payment of a preauthorized debit, and for giving notice of error. May an institution use a single telephone number for all these purposes?

A: Yes. Conversely, an institution could use different telephone numbers for one or more of these purposes. (§ 205.7(a)(2), (6), (7), and (10))

Q7–20: *Disclosures involving telephone numbers.* Must the telephone number (or list of numbers) referred to in question 7-19 be incorporated into the text of the disclosure to which it relates?

A: No. The institution may instead insert a reference to a telephone number that is readily available to the consumer (for example, "Call your branch office. The number is shown on your periodic statement."), except for the telephone number to be used for reporting a lost or stolen access device. In the latter case, the institution must disclose a specific telephone number on or with the disclosure statement. (§ 205.7(a)(2), (6), (7) and (10))

SECTION 205.8—Change in Terms; Error-Resolution Notice

Q8–1: *Terms requiring change-in-terms notice.* What categories of initial disclosures are subject to the change-in-terms notice requirement?

A: Examples of changes that must be disclosed are: an increase in the consumer's liability for unauthorized electronic fund transfers; a decrease in available types of electronic fund transfers; an increased strictness in limitations on frequency or dollar amount of transfers (with certain exceptions; see question 8-4); an increase in charges for electronic fund transfers or the right to make transfers, or the imposition of such charges for the first time. (§ 205.8(a))

Q8–2: *Change in telephone number or address.* Is an institution required to disclose a change in the telephone number or address for reporting possible unauthorized transfers?

A: No, but it must do so if it wishes to impose any liability on the consumer for such transfers. (§§ 205.8(a) and 205.6(a)(3))

Q8–3: *Closing down of ATMs.* If an institution closes down some of its automated teller machines, must it disclose this change?

A: No; such a change does not relate to an item required to be given in the initial disclosures. (§§ 205.8(a) and 205.7(a))

Q8–4: *Changes in limitations on transfers.* An institution limits the amount of money that consumers can withdraw daily from its ATMs. Because secrecy of the limits is essential to maintaining the security of the accounts or the system against theft, the details of the limits were not stated in the initial disclosures. The institution disclosed only that certain limits exist. If the limits are now made stricter, what must the institution disclose to its customers?

A: No disclosure is required, provided secrecy is still essential. In contrast, if the institution had no dollar limits when it made the initial disclosures and is now imposing limits for the first time, it must disclose at least the fact that limits have been adopted. (§§ 205.8(a) and 205.7(a)(4))

Q8–5: *Termination of EFT service.* If an insti-

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tution terminates a consumer's ATM or POS service by cancelling the access device, must it provide a disclosure?

A: No. But if the service involves credit (because the device is a combined credit card/access device, for example), notification under section 202.9(a) of Regulation B (Equal Credit Opportunity) may be required. If a credit report was involved in the decision to cancel the combined card, notification under section 615(a) of the Fair Credit Reporting Act also may be required. (§ 205.8(a))

Q8–6: *Form of change-in-terms notice.* May an institution give notice of a change in terms by sending copies of its revised disclosure statement?

A: Yes, provided attention is directed to the change (for example, in a cover letter referencing the changed term). No specific form or wording is required. The notice may appear on a periodic statement. (§ 205.8(a))

Q8–7: *Error-resolution notice—no periodic statements sent.* An institution must either provide its customers with the full error-resolution notice annually or include a short-form notice on or with each periodic statement. If an institution does not send periodic statements to certain EFT customers, how should it comply with this requirement?

A: It must send the full error-resolution notice annually. (§ 205.8(b))

Q8–8: *Error-resolution notice—changeover from one form to other.* An institution sends annual long-form error-resolution notices. If it wishes to adopt the short-form alternative, when must the first short-form notice be sent?

A: No later than 12 months after the last long-form notice was sent. Conversely, if an institution wants to switch to the long form, the first long-form notice should be sent no later than 12 months after the last short-form notice. (§ 205.8(b))

SECTION 205.9—Documentation of Transfers

Q9–1: *Receipts—furnished only on request.* An institution's electronic terminals are programmed to provide a receipt only if the consumer elects to receive one by pressing a key at the time of the transfer. Does this comply with the regulation?

A: Yes; the regulation merely requires that a receipt be made available to the consumer at the time of the transfer. (There is a limited exception to the receipt requirement under section 205.9(f) for certain cash-dispensing machines, but only if the machines were purchased or ordered before February 6, 1980.) (§ 205.9(a))

Q9–2: *Receipts—available through third parties.* What is the purpose of the footnote in the regulation that permits financial institutions to make terminal receipts available through third parties?

A: It permits institutions to arrange for operators of terminals in an EFT system (merchants or other financial institutions, for example) to make the receipt available. However, the financial institution holding the consumer's account or providing the EFT service to the consumer remains responsible for the availability of the receipt. (§ 205.9(a), footnote 2)

Q9–3: *Receipts—information displayed on screen.* Does a financial institution comply with the receipt requirement if it simply prints the receipt information on a display screen?

A: No. The receipt must be in a written form that the consumer can retain. (§ 205.9(a))

Q9–3.5: *Receipts—inclusion of promotional material.* A financial institution uses receipts on which there is promotional material (such as discount coupons for food items at restaurants). Is the printing of such promotional material on receipts prohibited by the regulation?

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A: No. The regulation does, however, mandate that the required receipt information be set forth clearly; this may be achieved, for example, by separating it from the promotional material. In addition, a consumer must not be required to surrender the receipt (or that portion containing the required disclosures) in order to take advantage of a promotion. (§ 205.9(a))

Q9–4: *Receipts—form.* Are there special rules regarding type size, length of receipt, and so forth?

A: No. The regulation does require, however, that the information on the receipt be set forth clearly. A series of unlabelled numbers or codes for various types of information, if not readily understandable on their face, would not be clearly set forth within the meaning of the regulation. The institution may document individual transfers on separate receipts, even though the consumer makes multiple transfers at the same time, or it may document them on a single receipt. (§ 205.9(a))

Q9–5: *Receipts—transfer not completed.* Does the terminal receipt requirement apply if a transfer is initiated but not completed (because the ATM is out of currency, for example)?

A: No; however, most terminals generate a receipt even if a transfer is not completed be cause of a terminal malfunction or because the consumer decided not to complete the transfer. (§ 205.9(a))

Q9–6: *Receipts—not furnished; inadvertent error.* Does a violation result if a terminal runs out of paper and a receipt is not made available to the consumer?

A: No, so long as it is a bona fide unintentional error and the financial institution maintains procedures reasonably adapted to avoid such an error. (§ 205.9(a), § 915(c))

Q9–7: *Receipts—date.* May a financial institution disclose an accounting or business date on the terminal receipt?

A: The calendar date on which the consumer uses the electronic terminal must be disclosed; an accounting or business date may be disclosed in addition, so long as the dates are clearly distinguished. If a transfer is initiated late one day and completed on the next day, the financial institution may disclose either calendar date on the receipt. (§ 205.9(a)(2))

Q9–8: *Receipts—access to multiple accounts of same type.* How should the type of account be disclosed on the terminal receipt when more than one account of the same type can be accessed by the consumer's access device?

A: Some examples: If an access device can be used by the consumer to make transfers to or from two checking accounts, the terminal receipt must specify which of the two has been accessed; a financial institution could disclose a cash withdrawal as "withdrawal from checking I" or "withdrawal from checking II." If only one account besides the primary checking account can be debited by the access device, it could be identified as "withdrawal from other account." The number of the account being accessed could be used both to identify the type of account and to serve as the unique identifier of the account. (§ 205.9(a)(3) and (4))

Q9–9: *Receipts—type of account.* A footnote states that the type of account need not be identified if the access device used to initiate the transfer can access only one account at a given terminal. When does this exception apply?

A: The exception applies to point-of-sale terminals, ATMs, and any other electronic terminals. It is available even if the access device can access more than one account when used at another terminal. For example, it is available when, in a shared ATM system, an access device can access only one account at a terminal operated by an institution other than the account-holding institution, even though the access device can access more than one account at terminals operated by the account-holding institution. Moreover, account refers only to asset accounts. If a consumer can use an access device at a terminal to debit an asset

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account and also to access a credit line, for example, the exception is still available. (§ 205.9(a)(3), footnote 3)

Q9–10: *Receipts—type of account, off-line ATMs.* A financial institution's ATMs permit access to multiple accounts of the same type when the ATM is on-line, and receipts uniquely identify the accounts by use of account numbers. When the ATM is off-line, however, access is permitted only to a primary account designated by the consumer in advance. The consumer is informed at the ATM that only the primary account can be accessed at that time. May the receipt describe the transfer as a "withdrawal from checking," for example, without a unique identification of the account?

A: Yes. Because the consumer can access only the primary account at the time of the off-line transfer, unique identification of the account is not required. (§ 205.9(a)(3), footnote 3)

Q9–10.5: *Receipts—type of account, interchange system.* What about an interchange system in which consumers can access multiple accounts of the same type at their account-holding institution's terminals, but only a primary account of each type at other terminals in the system—may the receipt at such other terminals describe the account in terms of "checking" or "savings," without unique identification?

A: Yes. (§ 205.9(a)(3), footnote 3)

Q9–11: *Receipts—unique identifier.* Does the financial institution have flexibility in providing a number or code that uniquely identifies the consumer, the consumer's account, or the access device used to initiate a transfer?

A: Yes. Any unique identification that will link the consumer to the particular transfer is sufficient to comply with this requirement. (§ 205.9(a)(4))

Q9–12: *Receipts—terminal location.* A financial institution wants to disclose the location of the terminal on the terminal receipt by giving a description in one of the three forms prescribed in the regulation. How may it satisfy the requirement?

A: The institution may, for example, preprint the terminal locations on its receipts. An institution that owns or operates terminals at only one location may use its name (such as "First Nat'l"). An institution with terminals in several locations must use a street address or a generally accepted name for a specific location. (§ 205.9(a)(5) and (b)(1)(iv))

Q9–13: *Receipts—omission of third-party name.* Under what circumstances may the name of a third party (to or from whom funds are transferred) be omitted from the terminal receipt?

A: The name may be omitted if the consumer provides the name in a form that the electronic terminal cannot duplicate on the receipt. For example, if a consumer initiates a utility payment at an ATM and provides the name of the payee by inserting a payment stub into the ATM, the terminal receipt need not name the utility company. (The name would have to appear on the periodic statement, of course.) On the other hand, if the consumer keys in the identity of the payee (by means of a code number, for example) the receipt must name the payee or use a code that is explained elsewhere on the receipt. The institution may, for example, preprint a series of codes and the specific payees to which they relate on the form, and print the correct code at the time of the transfer. (§ 205.9(a)(6))

(The regulation does not apply to bill payments made at an ATM by check or currency. See question 2–10.)

Q9–14: *Receipts—deposit receipt as proof of payment.* Section 906(f) of the act provides that required documentation constitutes prima facie proof of payment to another person; does this provision apply to a terminal receipt documenting a deposit?

A: No, because there is no payment to another person. (§ 205.9(a)(6))

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Q9–15: *Periodic statements—when required.* The regulation requires periodic statements to be sent for any account to or from which electronic fund transfers can be made. What does this mean?

A: The requirement applies only to those accounts for which an agreement has been entered into (1) between the consumer and the financial institution for EFT services to or from the account (including accounts for which an access device has been issued to the consumer) or (2) between the consumer and a third party (for preauthorized debits or credits, for example), when the institution has received notice of the agreement and the fund transfers have begun. (Passbook and statement accounts should be judged by these same criteria in determining whether the account is subject to documentation requirements under the regulation.)

If there is no specific agreement for EFT services, the periodic statement and other requirements of the regulation do not apply to the account. The fact that membership in an ACH requires a participating financial institution to accept electronic fund transfers to accounts at the institution does not make every account of that institution subject to the regulation. (§ 205.9(b), (c), and (d))

Q9–16: *Periodic statements—frequency.* How often must periodic statements be sent for accounts that are subject to the regulation?

A: A monthly statement is required for any account to or from which an EFT has occurred during the month, if the account is one that can be debited electronically (by use of an access device, telephone bill-payment service, or preauthorized transfers from the consumer's account, for example) or if the account can be credited electronically by other than preauthorized deposits. If no transfers occur during some months, the statement must be provided at least quarterly.

There are certain exceptions for accounts on which the only EFT service relates to preauthorized credits. The institution may send quarterly statements or, if the account is a passbook account, the institution may simply update the passbook when it is presented for updating (with the amount and date of each EFT since the last update).

Also, to eliminate duplicative statements, the regulation provides an exception from the periodic-statement requirement for certain intrainstitutional transfers between a consumer's accounts. This exception does not alter the statement provisions, however, with respect to accounts that receive preauthorized credits; such accounts continue to require quarterly statements or passbook updates. (§ 205.9(b), (c), (d), and (h))

Q9–17: *Periodic statements—inactive accounts.* Must quarterly statements be sent to all accounts that have had an EFT service associated with them, even though the accounts are considered inactive by the financial institution?

A: An institution need not send statements to accounts it considers inactive. The determination that certain accounts are inactive must be made by the institution. (§ 205.9(b) and (d))

Q9–18: *Periodic statements—customer pick-up.* May a financial institution permit consumers to call for their periodic statements?

A: Yes, but the institution may not require it. (§ 205.9(b) and (d))

Q9–19: *Periodic statements—periodic cycles.* May financial institutions send out a periodic statement each time an electronic fund transfer occurs?

A: No. Although statements may be sent on a cycle that is shorter than monthly, the statements must correspond to an actual periodic cycle. (§ 205.9(b))

Q9–20: *Periodic statements—variance in cycle.* Must a cycle for a periodic statement be exactly a month, quarter, or other regular period?

A: No. Cycles will be considered equal if the number of days in the cycle does not vary by more than four days from the regular day or

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date of the periodic statement. It is also permissible to stagger the statement cycle for different accounts for operational or other reasons. (§ 205.9(b) and (d))

Q9–21: *Periodic statements—summary limited to EFT activity.* Certain consumer passbook accounts can be debited electronically and thus do not qualify for the exception from the periodic statement requirement. The financial institution continues to use the passbook as the primary means for displaying all transfers (electronic and nonelectronic) on the account. May the institution comply with the regulation by providing a summary periodic statement covering only the electronic activity?

A: Yes. Other required disclosures (such as charges, account balances, and address and telephone number for inquiries) must, of course, also be included. (§ 205.9(b))

Q9–22: [Reserved.]

Q9–23: *Periodic statements—accompanying documents.* A footnote in the regulation permits details about each transfer to be given on documents accompanying the periodic statement; it also permits codes to be used, so long as they are explained on the statement or accompanying documents. How can a financial institution take advantage of this provision?

A: This provision gives financial institutions that do not use descriptive statements an alternative means for meeting the documentation requirements. Some examples: An institution could include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals. It could enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information. It could use codes (for names of third parties, terminal locations, etc.) and explain the information to which they relate on an accompanying document. (§ 205.9(b)(1), footnote 4)

Q9–24: *Periodic statements—accompanying documents.* May required information other than information about each electronic transfer appear on accompanying documents?

A: Yes. The regulation imposes no page requirements for periodic statements; thus, the required information need not all appear on a single page. (See question 9–34.) (§ 205.9(b))

Q9–25: *Periodic statements—information obtained from others.* For purposes of periodic statement disclosures, may a financial institution unconditionally rely on data transmitted to it by another financial institution or other party (such as a merchant)?

A: Independent verification of the data for each transfer is not required. Financial institutions must, however, generally maintain reasonable procedures to avoid violations of the regulation, whether as a result of faulty data transmission or errors of third parties. (See the exception to liability under section 915 of the act for bona fide unintentional errors.) (§ 205.9(b)(1))

Q9–26: *Periodic statements—terminal location omitted.* When a consumer makes a deposit at an ATM, the institution need not identify the ATM location on the periodic statement. Does the consumer's request for the terminal location (or any other information about the deposit) trigger the error-resolution procedures under the regulation?

A: Yes, if the request for the location is made in accordance with the requirements of the error-resolution section. However, in responding, the institution need only provide the consumer with the ATM location if it has captured that information with regard to deposits. If the consumer merely calls to ascertain whether or not a deposit (ATM, preauthorized, or any other type of electronic transfer) was credited to the account, the error- resolution procedures do not apply. (§§ 205.9(b)(1)(iv), footnote 4a, and 205.11(a)(7))

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Q9–27: *Periodic statements—type of POS transfer.* How should the periodic statement identify a transfer that takes place at a merchant's POS terminal—as a purchase or sale of goods or services, or as a payment to a third party?

A: There is no prescribed terminology. (§ 205.9(b)(1)(iii))

Q9–28: *Periodic statements—transferor/federal recurring payments.* How should the name of the third party be disclosed on the periodic statement for federal recurring payments?

A: For any federal recurring payment (such as Social Security, military or civil service pensions/payrolls) the third-party name may be disclosed as "U.S. gov't," "fed sal," or any other designation indicating that the payor is the United States government. (§ 205.9(b)(1)(v) and (e))

Q9–29: *Periodic statements—multiple transferees.* A financial institution permits consumers to make multiple payments at an ATM by keying in a composite dollar amount and inserting payment stubs into the ATM to indicate who the individual payees are. If a consumer keys in an amount and directs the institution to pay three utility bills from that sum, must the three companies be named on the periodic statement?

A: Yes. The names of all three utilities must be provided on the periodic statement so that the documentation can serve as proof of payment for the consumer. (§ 205.9(b)(1)(v))

Q9–30: *Periodic statements—consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, may the financial institution identify the recipient on the periodic statement by giving the person's account number?

A: No. The institution must disclose the recipient by name. (§ 205.9(b)(1)(v))

Q9–31: *Periodic statements—charges.* What charges must be disclosed on the periodic statement?

A: Financial institutions should disclose the charges assessed against the account during the statement period for electronic fund transfers or the right to make transfers, or for account maintenance (including both EFT and non-EFT and both fixed fees and per-item charges). The charges may be disclosed as a total or may be itemized in part or in full, at the institution's option. (§ 205.9(b)(3))

Q9–31.5: *Periodic statements—charges in interchange system.* Charges are imposed on the account-holding institution by the operator of a shared or interchange ATM system for the use of the system. In addition, charges may be imposed by other institutions in the system for the use of their ATMs. Must such charges be disclosed by the account-holding institution on the periodic statement?

A: The fact that charges are imposed on the account-holding institution by the system or terminal-operating institution does not, by itself, require a disclosure to the consumer. However, the institution must disclose any charges it imposes on the consumer for EFT services, including charges for ATM transactions in an interchange or shared ATM system.

Charges for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement. (§ 205.9(a)(1), (b)(1)(i), and (b)(3))

Q9–32: *Periodic statements—opening and closing balances.* The financial institution is required to disclose an opening and a closing balance in the consumer's account. May these balances be based solely on the electronic activity?

A: No. The balances must take into account both electronic and nonelectronic activity. (§ 205.9(b)(4))

Q9–33: *Periodic statements—telephone numbers.* A financial institution is required to disclose a telephone number for error resolution and (if it is using the telephone alternative for preauthorized credits) a number for the consumer to call to ascertain whether a preau-

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thorized credit has occurred. Would disclosure of a single telephone number for both purposes, preceded by the "direct inquiries to" language, satisfy both requirements?

A: Yes. (§ 205.9(b)(5) and (6))

Q9–34: *Periodic statements—telephone numbers.* May the institution disclose the telephone number for inquiring about preauthorized transfers to the consumer's account on a credit advice or other document enclosed with the periodic statement?

A: Yes. (See question 9–24.) (§ 205.9(b)(6))

Q9–35: *Receipts/periodic statements—incorrect deposit amount.* What does the regulation require if the amount of a deposit, as verified by the institution, turns out to be different from the amount entered by the consumer into the terminal?

A: An institution need not notify the consumer about the discrepancy per se. The next periodic statement should reflect the proper amount of the deposit or, depending on the institution's bookkeeping system, a correction of the erroneous amount. The institution must of course comply with the error-resolution procedures if the consumer alleges an error in the deposit. (§ 205.9(a)(1) and (b)(1)(i))

Q9–36: *Receipts/periodic statements—type of transfer.* What degree of specificity is required on terminal receipts and periodic statements for the type of transfer?

A: Common descriptions are sufficient. There is no prescribed terminology, although some examples are contained in the regulation. On periodic statements, it is enough simply to show the amount of the transfer in the debit or the credit column if other information on the statement (such as a terminal location or third-party name) enables the consumer to identify the type of transfer. When a consumer obtains cash from a merchant at a POS terminal in addition to purchasing goods, or obtains cash only, it is not necessary to differentiate the transaction from one involving only the purchase of goods. (See question 9–27.) (§ 205.9(a)(3) and (b)(1)(iii))

Q9–37: *Receipts/periodic statements—type of account; generic descriptions.* The regulation permits a withdrawal from a consumer's share draft account at a credit union to be identified as a "withdrawal from checking." What is this provision intended to accomplish?

A: The regulation permits generic descriptions of the type of account to facilitate operations in a shared EFT network. For example, in a shared system, a credit union member may be able to initiate transfers to or from a share draft account at a terminal owned or operated by a bank, which may describe accounts only as "checking" or "savings" accounts (and be unable to generate a receipt describing the transfers as to or from a "share draft" account). (§ 205.9(a)(3) and (b)(1)(iii))

Q9–38: *Receipts/periodic statements—location code.* May a transaction code be used to comply with the terminal location requirement?

A: Yes, if the transaction code (or the portion that relates to the terminal location) is clearly set forth on the receipt. It must, of course, be reproduced on the periodic statement. (§ 205.9(a)(5) and (b)(1)(iv))

Q9–39: *Receipts/periodic statements—shared system; unique codes.* In a shared or interchange environment, must the various codes used on terminal receipts and periodic statements be unique?

A: In shared or interchange systems, identical numbers may well appear on the consumer's periodic statement for terminals operated by different institutions or merchants; this is permissible. (§ 205.9(a) and (b))

Q9–40: *Receipts/periodic statements—omission of city name.* In disclosing the terminal location on a terminal receipt and on the periodic statement, a financial institution uses a

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generally accepted name (such as a branch name) for a specific location. May the city be omitted when the branch name and the city are the same?

A: Yes. (§ 205.9(a)(5) and (b)(1)(iv))

Q9–40.5: *Receipts/periodic statements—interchange system; terminal location.* In a shared or interchange system, a consumer uses terminals operated by institutions other than the account-holding institution. The terminal operators have terminals at more than one location, and the terminal receipts include a street address, city, and state in addition to the name of the terminal operator. In contrast, the periodic statement provided by the account-holding institution identifies the terminal location for these transfers by listing the name of the terminal operator and the city and state. Does this identification comply with the regulation?

A: Yes. For transfers initiated at nonproprietary terminals, the account-holding institution may describe the location on the periodic statement by naming the entity at whose place of business the terminal is located (or which owns or operates the terminal), plus the city and state. It need not repeat on the periodic statement the street address given on the terminal receipt; similarly, it need not include identification codes or terminal numbers shown on the receipt by the terminal operator. (§ 205.9(a)(5) and (b)(1)(iv))

Q9–41: *Receipts/periodic statements—terminal location/third party.* May a single listing be used to identify both the terminal location and the name of the third party to or from whom funds are transferred?

A: Yes. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as "XYZ Store, Anytown, Ohio." (§ 205.9(a)(5) and (6), and (b)(1)(iv) and (v))

Q9–42: *Receipts/periodic statements—intermediate party.* If a party (a merchant or another financial institution, for example) processes an electronic fund transfer but is not the ultimate transferee or transferor, must it be identified on terminal receipts or periodic statements?

A: No. Such parties need not be named either on the receipt or on the periodic statement. (§ 205.9(a)(6) and (b)(1)(v))

Q9–43: *Receipts/periodic statements—account-holding institution as third party.* The regulation requires identification of the third party to or from whom a transfer is made, on the terminal receipt and periodic statement. Is an account-holding financial institution considered a third party for purposes of this requirement?

A: Yes. A third party is generally someone other than the consumer and the financial institution. However, section 906(f) of the act requires that any documentation provided to the consumer shall constitute prima facie proof of a transfer to another person, and applies to documentation of payments made to the account-holding institution.

The institution need not be named on the receipt and periodic statement as the payee if the fact that payment was made to the institution is sufficiently indicated by other information (for example, "loan payment from checking," if this can be taken to mean that the payment was to the account-holding institution). (§ 205.9(a)(6) and (b)(1)(v))

Q9–44: *Receipts/periodic statements—consistency in third-party identity.* May a financial institution disclose, on the periodic statement, a third-party name other than the one that appeared on the receipt?

A: No. If the d.b.a. (doing business as) name of the third party appeared on a terminal receipt, that name must also appear on the periodic statement. Similarly, if a parent corporation's name appeared on the terminal receipt, it must also be used on the periodic statement. (§ 205.9(a)(6) and (b)(1)(v))

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Q9–45: *Passbook updates—when required.* Is a financial institution required to update a passbook every time the consumer presents it (for example, when the consumer uses the passbook to make a deposit or withdrawal)?

A: No. The institution need only update the passbook (by entering the amount and date of preauthorized credits since the preceding update) when the consumer presents it for updating. (§ 205.9(c))

Q9–46: *Passbook accounts—telephone notice alternative.* May an institution utilize the telephone notice alternative for passbook accounts that do not receive periodic statements?

A: Yes. (See question 10–12.) (§§ 205.9(c) and 205.10(a)(1)(iii))

Q9–47: *Passbook updates—discarding of data.* May a financial institution set a cut-off period for retention of information awaiting entry in the consumer's passbook?

A: No. However, the financial institution need not update a passbook immediately upon presentation if the information is not readily available. It may retain the passbook, add the information, and return the updated passbook promptly to the consumer, or it can mail separate documentation to the consumer. (§ 205.9(c))

Q9–48: *Passbook updates—periodic transmittals.* May a financial institution, in lieu of retaining the information between presentations of the passbook, send a consumer updates of preauthorized credits on a periodic basis?

A: Yes. (§ 205.9(c))

Q9–49: *Quarterly statements—compliance with regular requirements.* The regulation requires quarterly periodic statements for non-passbook accounts that cannot be accessed electronically except by preauthorized credits. Must these statements meet the periodic statement requirements of the regulation?

A: Yes. The statements must comply with all requirements for periodic statements. The only difference is that they may be sent quarterly. (§ 205.9(d))

Q9–50: *Periodic statements—transfers between accounts.* The regulation provides that an account is excepted from the periodic-statement requirements for transfers to or from another account of the consumer within the institution, if these transfers are described on a complying statement for the other account. What effect does this have on the periodic statement requirements for accounts that also are accessed by other electronic transfer activity?

A: The exception applies only to the transfers between accounts. The financial institution must comply with the applicable periodic statement requirements for any other electronic transfers to or from the account. For example, a quarterly Regulation E statement must be sent for an account that also receives payroll deposits electronically, and a Regulation E statement must be sent for any month in which an account is also accessed by a withdrawal at an ATM. However, a financial institution need not comply with the Regulation E requirements on such statements for transfers that are otherwise exempt, such as the transfers between accounts discussed above. (§§ 205.9(c), (d), and (h))

Q9–51: *Periodic statements—foreign-initiated transfers.* Failure to provide terminal receipts and periodic statements for transfers initiated outside the United States is deemed not to be a failure to comply with the regulation if an inquiry or request for documentation is treated as a notice of an error. What does this mean?

A: The relaxation in documentation requirements takes account of the fact that some foreign-based terminals do not capture all of the information required by the regulation. However, it is expected that the institution would make a good faith attempt to provide on the periodic statement the information required by the regulation to identify the transfer. For example, even though the institution may not

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be able to provide the location of the specific terminal, it should, if possible, identify the country and city in which the transfer was initiated. (§ 205.9(i))

SECTION 205.10—Preauthorized Transfers

Q10–1: *Notice of credit—choice of type.* Must consumers be given a choice of the type of notice to be provided regarding receipt of preauthorized credits?

A: No. It is up to the financial institution to decide which method of notice the institution wants to use. The institution may use different methods for different types or series of preauthorized transfers. (§ 205.10(a)(1))

Q10–2: *Notice of credit—when receipt guaranteed.* A financial institution guarantees its customers that scheduled Social Security transfers will be credited to their accounts whether or not the institution actually receives the funds on time. Does the notice requirement apply?

A: Yes, unless the institution has adopted the negative-notice option, in which case sending the notice might confuse the consumer. (§ 205.10(a)(1))

Q10–3: *Notice provided by payor.* Are there instances in which the financial institution does not have to provide notice?

A: Yes. If the payor provides notice to the consumer that a transfer has been initiated, the financial institution is not required to provide notice of receipt. (§ 205.10(a)(1))

Q10–4: *Notice provided by payor—form.* If the payor-employer provides notice to a consumer that a transfer has been initiated, what type of notice must it give?

A: There is no required form or terminology. A pay stub that shows the net deposit is sufficient. (§ 205.10(a)(1))

Q10–5: *Content of notice.* Is there suggested language for the notice regarding receipt of a preauthorized transfer?

A: No. Identification of the deposit is sufficient. (§ 205.10(a)(1))

Q10–6: *Current account balance.* May an institution give notice by informing the consumer of the current balance in the account?

A: Such a notice will not satisfy the notice requirement. (§ 205.10(a)(1))

Q10–7: *Periodic statement as notice.* If a periodic statement sent within two business days reflects the transfer, can it serve as positive notice of receipt?

A: Yes. Similarly, the absence of the deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) will serve as negative notice. (§ 205.10(a)(1))

Q10–8: *Negative notice—timing.* If an institution uses a negative-notice system and a preauthorized credit fails to arrive on the scheduled date, but does arrive within two business days, must a notice be sent?

A: No. If the deposit did not arrive by the close of the second business day, however, a notice would have to be sent at that time. (§ 205.10(a)(1)(ii))

Q10–9: *Negative notice—cessation of transfers.* An institution uses a negative-notice system. If preauthorized transfers to a consumer's account cease to occur, must the institution send notices of nonreceipt indefinitely?

A: No. In the absence of information from the consumer or the payor that the transfers have been terminated, the institution should send the notices at least three times; or, it may notify the consumer that the institution believes the transfers have stopped and that therefore no further negative notices will be sent. (§ 205.10(a)(1)(ii))

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Q10–10: *Telephone notice—timing.* How quickly must a financial institution respond to a consumer's telephone inquiry about whether a preauthorized transfer has been received?

A: In most instances, an institution should be able to provide verification during the same telephone call. However, if the information is not immediately available—because of a time lapse between the scheduled transfer date and the consumer's call, for example—the institution should respond within two business days. (§ 205.10(a)(1)(iii))

Q10–11: *Telephone notice—availability.* The regulation requires that the telephone line for inquiries about preauthorized credits be readily available. What does this mean? Also, must the institution provide a toll-free number or accept collect calls?

A: To satisfy the readily-available standard, the financial institution should provide enough lines so that consumers get a reasonably prompt answer, using any answering system it wants.

As to toll-free calls, an institution should provide—within its primary service area—a telephone number to which calls can be made without charge to the customer. In some cases, a financial institution will have customers who reside away from the city or state where the financial institution normally conducts business; the financial institution need not provide a toll-free number or accept collect long-distance calls from these customers.

The financial institution need not provide 24-hour telephone lines to respond to consumers' inquiries. Telephone service during normal business hours will suffice. (§ 205.10(a)(1)(iii))

Q10–12: *Telephone notice—passbook accounts.* An institution that uses the telephone alternative for preauthorized credits is required to give the telephone number in the initial disclosures and on each periodic statement. Customers whose passbook accounts can only be accessed by preauthorized credits do not receive periodic statements. How might the financial institution comply with the second condition?

A: The institution may take any reasonable measure to provide the number to consumers. It may stamp the telephone number in the passbook, for example, or include the telephone number with the annual error resolution notice. (§ 205.10(a)(1)(iii))

Q10–13: *Preauthorized credits—availability of funds.* When must funds deposited to an account via preauthorized transfers be available to the consumer?

A: The regulation requires that preauthorized transfers be credited as of the day the funds for the transfer are received. The determination of when these funds are available to the consumer for withdrawal will depend on applicable state law, if any, and on other federal regulations, if any. (§ 205.10(a)(2))

Q10–14: *Preauthorized credits—posting schedule.* If a financial institution normally posts credits to customers' accounts in the morning and it receives an ACH tape in the afternoon, may the institution delay the posting until the next morning?

A: Yes. An institution need not alter its established posting schedule. However, the funds must be credited to the consumers' accounts as of the date the funds are received. (§ 205.10(a)(2))

Q10–15: *Preauthorized credits—funds received prior to agreed crediting date.* Is a financial institution ever permitted to credit a consumer's account later than the date the funds are received from the payor?

A: Yes. If the financial institution and the payor have agreed that the payor will transmit funds to the institution in advance of the date on which the institution is to credit consumers' accounts (for example, two days in advance of pay day), the institution may credit the accounts as of the date agreed upon with the payor (that is, pay day). (§ 205.10(a)(2))

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Q10–16: *Preauthorized debits—preexisting authorizations.* If an agreement for preauthorized electronic fund transfers from an account was entered into before May 10, 1980, must a new authorization be obtained by the designated payee or by the financial institution?

A: No. (§ 205.10(b))

Q10–17: *Preauthorized debits—preexisting authorizations.* If a consumer's existing authorization, which authorizes the institution or the designated payee to debit the consumer's account, does not specify that the debiting is to occur electronically (or specifies that debiting is to occur by paper means), must a new authorization be obtained in order to debit the account electronically?

A: The regulation does not require that new authorizations be obtained. (§ 205.10(b))

Q10–18: *Preauthorized debits—authorization obtained by third party.* If a consumer authorizes a third party (for example, an insurance company) to initiate preauthorized electronic fund transfers from the consumer's account and the third party fails to obtain the authorization in writing or to give a copy to the consumer, is the account-holding financial institution in violation of the regulation?

A: No. The party that obtains the authorization—in this instance, the third party—is the person that is subject to these requirements. (§ 205.10(b))

Q10–18.5: *Preauthorized debits—authorization.* A consumer telephones the financial institution or designated payee to arrange for preauthorized electronic fund transfers from the consumer's account, and subsequently receives a form for authorizing the fund transfers. The consumer signs and returns one copy of the form, and retains a copy. Does this procedure comply with the regulation?

A: Yes; the confirmation form serves as the required written authorization. The regulation does not require that a prescribed format be used. (§ 205.10(b))

Q10–18.6: *Preauthorized debits—authorization by agent.* A telemarketing company (directly or through an agent) asks consumers to make the monthly payments for their purchases by preauthorized electronic fund transfers. If a consumer agrees, the company obtains the consumer's bank account number and completes a written authorization based on the telephone conversation (which the company records). The company signs the authorization as the consumer's agent and sends the consumer a written confirmation of the transaction. Does this procedure satisfy the requirement of the act and regulation that preauthorized EFTs may be authorized by the consumer only in writing?

A: No. The requirement that preauthorized EFTs may be authorized by the consumer only in writing cannot be met by a payee signing a written authorization on the consumer's behalf, with only an oral authorization from the consumer. The tape recording of the telephone conversation does not constitute an authorization by the consumer "in writing" for purposes of the requirement. (§ 205.10(b))

Q10–19: *Preauthorized debits—stop-payment order.* On October 10, a consumer orally orders the financial institution to stop payment on a $30 utility bill that is scheduled to be paid on October 15. The payment is stopped. The consumer properly confirms the order in writing on October 17. On October 30 the utility company resubmits the $30 debit. Must the financial institution stop payment on the resubmitted item?

A: Yes. The institution may accomplish this, for example, by suspending all subsequent payments to the designated payee until the consumer notifies the institution that payments should resume. (§ 205.10(c))

Q10–20: *Ten-day notice of varying debits—preexisting authorizations.* If the consumer agreed to varying preauthorized transfers from the consumer's account prior to May 10, 1980, must the financial institution (or the designated payee) give the consumer the 10-day advance notice of transfers that vary in amount?

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A: Yes, unless the consumer has been informed of the right to receive notice of such varying payments and the consumer has authorized payment within a specified range of amounts. (§ 205.10(d))

Q10–21: *Ten-day notice—payee's failure to provide.* Does the financial institution holding the consumer's account have any liability for the designated payee's failure to provide notice of varying amounts?

A: No. (§ 205.10(d))

SECTION 205.11—Procedures for Resolving Errors

Q11–1: *Transfers—initiated by institution.* If a transfer is initiated by a financial institution or its employee without the consumer's authorization, does it constitute an error?

A: Yes. It constitutes an incorrect electronic fund transfer unless the transfer was authorized, for example, by a court order. (§ 205.11(a))

Q11–2: *Loss or theft of access device.* If a consumer reports the loss or theft of an access device, is the institution required to comply with the error-resolution procedures?

A: No, unless the consumer also alleges possible unauthorized use as a consequence of the loss or theft. (§ 205.11(a))

Q11–3: *Error asserted after account closed.* Must an institution comply with the error-resolution procedures if a consumer asserts an error after closing the account relationship with the institution?

A: Yes, assuming that the error allegation is properly made. (§ 205.11)

Q11–4: *Request for documentation or information.* May a financial institution assume, absent a statement to the contrary by the consumer, that a request for duplicate copies of documentation or other information is for tax or other record-keeping purposes and therefore not an alleged error?

A: No. Requests for duplicate copies of documentation or other information should be treated as errors unless it is clear that the request by the consumer is *only* for tax or other record-keeping purposes. (§ 205.11(a)(7))

Q11–5: *Statement held for consumer—timing of error rights.* A consumer has arranged for periodic statements to be made available at the financial institution and held until called for. For purposes of the 60-day time limits for alleging an error, when is the statement for a particular cycle deemed to have been transmitted?

A: When it is first made available to the consumer. (See question 9–18.) (§ 205.11(b)(1)(i)(A))

Q11–6: *Failure to provide statement—timing of error rights.* How quickly must a consumer give notice that the financial institution failed to provide a periodic statement?

A: The notice of error must be received by the institution within 60 days from the date on which the statement should have been transmitted. (§ 205.11(a)(7) and (b)(1)(i))

Q11–7: *Discovery of error by institution.* Does discovery of an error by the financial institution require that the institution comply with the error-resolution procedures?

A: No. The procedures need be followed only when a notice of error is received from the consumer or an agent of the consumer. (§ 205.11(b)(1))

Q11–8: *Content of error notice.* Must the notice of error given to the financial institution contain the consumer account number?

A: No, so long as the notice enables the institution to identify the account in question. (§ 205.11(b)(1)(ii))

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Q11–9: *Written confirmation-of-error notice.* Must a financial institution have referral procedures for forwarding a written confirmation of error that is sent to the wrong address?

A: No. The referral requirement does not apply to a written confirmation that is sent to an address other than the one specified to the consumer at the time oral notice was given. (§ 205.11(b)(1)(i), footnote 10, and (b)(2))

Q11–10: *Written confirmation—timing of investigation.* May a financial institution delay its investigation until it has received a written confirmation?

A: No. The investigation must begin promptly upon receipt of the oral notice. This requirement is not affected by the institution's request for written confirmation. (§ 205.11(c)(1), (2), and (3))

Q11–11: *Deadlines for investigation of error.* May a financial institution take the full 10 business days or 45 days to investigate?

A: The requirement is to investigate promptly; the stated time periods are maximums. (§ 205.11(c)(1) and (2))

Q11–11.5: *POS debit card transactions.* The deadlines for investigating errors are extended for all transfers resulting from POS debit-card transactions, regardless of whether an electronic terminal is involved. For purposes of these deadlines, what types of transactions can be viewed as POS debit-card transactions?

A: POS debit-card transactions include all debit card transactions at merchants' point-of-sale terminals, including those for cash only. (Transactions at ATMs, however, are not POS even though the ATM may be in a merchant location.) POS debit-card transactions generally take place at merchant locations but also include mail and telephone orders of goods or services involving a debit card. (§ 205.11(c)(4))

Q11–12: *Request for documentation—facsimile or photocopy.* When a consumer requests documentation, may the institution provide a facsimile or a photocopy?

A: Yes, so long as the photocopy or facsimile is legible. (§ 205.11(d)(1) and (f)(3))

Q11–13: *Request for documentation—third parties.* A consumer requests information or documentation that is not in the institution's possession, but in the possession of a third party with whom the financial institution has no agreement. How does an institution comply with the error-resolution requirements?

A: By a timely response to the effect that the institution does not have the requested material. (§ 205.11(d)(2))

Q11–14: *Scope of investigation—bill payment to third party.* A consumer alleges an error involving a payment to a third party via a financial institution's telephone bill-payment plan. Is a review of the institution's own records a sufficient investigation?

A: Yes, assuming there is no agreement between the financial institution and the third party concerning the telephone bill-payment service. (§ 205.11(d)(2))

Q11–15: *Scope of investigation—preauthorized credits.* A consumer alleges an error regarding an EFT direct deposit of payroll. The financial institution and the payor have an agreement with respect to honoring an access device at point-of-sale terminals, but there is no agreement with the payor regarding the direct deposit of payroll. May the financial institution limit its investigation of the direct-deposit error to a review of its own records?

A: Yes. The institution would be required to investigate beyond its own records only if the alleged error involved a POS transfer or if the financial institution and the payor did have an agreement regarding the direct deposit of payroll. (§ 205.11(d)(2))

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Q11–16: *Scope of investigation—POS transfers.* A merchant agrees to honor a financial institution's access devices at the merchant's POS terminals. What is the institution's duty to investigate when a consumer alleges an error involving a transfer to the merchant via the POS terminal?

A: The financial institution must contact the merchant directly or, in systems like the national credit card networks, indirectly by contacting the merchant's bank. It may not rely on information previously transmitted by the merchant without verifying it. For example, the financial institution may have to request a copy of the sales slip signed by the consumer in order to verify that the amount of the transfer corresponds to the amount of the consumer's purchase. A financial institution is not required, however, to take such steps as sending an employee to the merchant's place of business to ascertain the correct cost of the merchandise purchased in the transaction. (§ 205.11(d)(2))

Q11–17: *Error found—different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, must the institution comply with both (1) the procedures applicable when the institution determines that no error occurred and (2) the procedures applicable when it determines that an error did occur?

A: Yes, to the extent that the procedures are relevant. In such a case, the institution may give notice of correction and the explanation either separately or in a combined form. (§ 205.11(e) and (f))

Q11–18: *Crediting of interest.* Does the requirement to credit interest apply to all error corrections?

A: No, it applies only to those involving interest-bearing accounts. (§ 205.11(e)(1))

Q11–19: *Refunding of fees and charges.* Is the financial institution required, when it corrects an error, to refund all fees or charges imposed on the account?

A: The financial institution is required to refund those fees or charges that were imposed as a consequence of the error. In a combined credit/EFT transaction, for example, the financial institution must refund any finance charges incurred as a result of the error. Fees or charges that would have been imposed even if the error had not occurred need not be refunded. (§ 205.11(e)(1))

Q11–20: *Notice of correction—timing.* The regulation requires notice of a correction to be given promptly. Is this requirement satisfied if the institution includes the notice on a periodic statement mailed within the 10 business days or 45 calendar days?

A: Whether such a mailing will be prompt enough to satisfy the requirement must be determined by the financial institution, taking into account the specific facts involved. (§ 205.11(e), footnote 12)

Q11–21: *Written explanation—timing.* If an institution completes its investigation on day 45 and determines that no error occurred, must it send the written explanation that same day?

A: Under the 45-day limit, the financial institution has an additional 3 business days to send the explanation. If, however, the financial institution is proceeding under the 10-business-day provision and determines on day 10 that no error occurred, the institution does not have an additional 3 business days; it must send the explanation on day 10. (§ 205.11(f)(1))

Q11–22: *Debiting of recredited funds—items to be honored.* If a financial institution debits a consumer's account for provisionally recredited funds, must it honor all items presented during the succeeding five business days?

A: No. The financial institution need honor only those items that would have been paid, under the bank's normal operating proce-

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dures, if the account had not been debited. For example: if an account with a balance of $155 is debited in the amount of $100 for provisionally recredited funds (leaving a balance of $55) and checks for $150 and $200 are presented by third parties, the financial institution need honor only the $150 item. Moreover, the institution need honor only items (including preauthorized transfers) payable to third parties. It need not permit ATM or other cash withdrawals by the consumer. (§ 205.11(f)(2)(ii))

Q11–23: *Debiting of recredited funds—an alternative procedure.* If the institution instead establishes a procedure under which it notifies the consumer that the consumer's account will be debited 5 business days from the transmittal of the notification—and specifies the calendar date on which this debiting will occur—does this procedure satisfy the requirement?

A: Yes. (§ 205.11(f)(2)(ii))

Q11–24: *Debiting of recredited funds—charges for overdrafts.* May a financial institution charge the consumer for overdrafts which occur as a consequence of the facts described in question 11–22?

A: The financial institution may not charge the consumer for overdraft items that are honored as a consequence of the five-business-day requirement. It may, however, impose any normal transaction or item charges that are unrelated to an overdraft resulting from the debiting. The institution may, for example, impose a return-item charge relative to the $200 returned item referred to in question 11–22.

After the five business days, if the account is still overdrawn the institution may impose finance charges to which it is entitled (if any) under an overdraft credit plan. (§ 205.11(f)(2)(ii))

Q11–25: *Documents relied on—request from consumer.* When a consumer requests copies of documents that the financial institution relied on in determining that no error occurred, what is required?

A: The institution should provide copies of the documentation in a readily understandable form. An institution that relies on magnetic tape in making its determination should translate the data into readable form, by printing out the applicable data and explaining the codes, for example. (§ 205.11(f)(3))

Q11–26: *Documents relied on—privacy issue.* If a document contains information on several consumers, should a copy of the entire document be given to the consumer?

A: No. To protect the privacy of the other consumers, the institution should provide only the information or documentation relating to the consumer alleging the error. (§ 205.11(f)(3))

Q11–27: *Documents relied on—no information on relevant tapes.* If a financial institution's investigation shows that there is no information relating to the consumer on the magnetic tape or other documentation in question, what does the institution have to provide?

A: The financial institution may comply with the requirement to provide copies of documentation by informing the consumer that the relevant documents were searched and were found to contain no information about transfers relating to the consumer. (§ 205.11(f)(1) and (3))

Q11–28: *Withdrawal of error notice.* A consumer withdraws an allegation of error after the institution has investigated and has determined that no error occurred but before the institution provided the written explanation. May the institution treat the error as voluntarily withdrawn?

A: Yes. (§ 205.11(g))

Q11–29: *Withdrawal of error notice.* A consumer calls the financial institution to question the amount of a Social Security deposit,

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and the institution suggests the difference may be due to a general decrease in benefits. Is the consumer's acceptance of the explanation a voluntary withdrawal of an error allegation?

A: Yes. (§ 205.11(g))

Q11–30: *Reassertion of error.* Does a consumer who has withdrawn an allegation of error have the right to reassert the allegation?

A: Yes, unless the financial institution had complied with all of the error-resolution requirements before the allegation was withdrawn. The consumer must, however, reassert the error by giving proper notice within the original 60-day period. (§ 205.11(b) and (h))

Q11–31: *Charges for error resolution.* May a financial institution charge consumers for the institution's compliance with the error-resolution procedures?

A: Although the regulation is silent on this point, the Board has expressed concern about any chilling effect on the good faith assertion of errors that might result from the imposition of charges. Financial institutions should be aware of the prohibition against agreements that constitute a waiver of rights conferred by the act. (§ 205.11, § 914)

Q11–32: *Applicable error-resolution provisions—overdraft credit line.* A consumer withdraws funds from a checking account by use of an ATM and the withdrawal overdraws the account, thereby resulting in a transfer of funds from the credit line to the checking account. If an error is alleged, which error resolution procedures apply to the overdraft portion, Regulation E or Regulation Z?

A: Regulation E applies because there has been an electronic fund transfer. The financial institution must follow the requirements of the error-resolution provisions of Regulation E that deal with the definition of error, requirements for notice, and procedures for correction of errors.

Sections 226.13(d) and (g) of Regulation Z continue to apply to the credit extension portion. These include the temporary prohibition on collection actions, the consumer's right to withhold disputed amounts, the limitation on adverse credit reports, and the right to prevent an automatic debit of disputed amounts. (§ 205.11(i))

Q11–33: *Applicable error resolution procedures—credit card/access device.* If a consumer uses a combined credit card/access device to withdraw funds at an ATM directly from a non-overdraft credit line and later alleges an error, which error resolution procedures apply, Regulation E or Regulation Z?

A: Regulation Z applies, because the credit line is not a consumer asset account. The transaction thus does not involve an electronic fund transfer. (§ 205.11(i))

SECTION 205.12—Relation to State Law

Q12–1: *Preemption of state EFT laws—specific determinations.* The regulation prescribes standards for determining whether state laws that govern electronic fund transfers are preempted by the act and the regulation. If, under these standards, a state law is inconsistent with the federal law, and is not more protective, is it automatically preempted by operation of law, absent a Board determination of preemption?

A: State law may be preempted even if the Board has not issued a determination. Interested parties may seek a Board determination by following the procedures set forth in the regulation. (§ 205.12(a) and (b))

SECTION 205.13—Administrative Enforcement

Q13–1: *Disclosure forms—compliance.* Will the Board or its staff review or approve disclosure forms or statements for financial institutions?

A: No. However, the Board has issued model clauses that financial institutions may use, if they wish, when designing their forms or

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statements. If a financial institution uses these clauses accurately to reflect its services, the financial institution is protected from liability for failure to make disclosures in proper form. (Appendix A, § 915(d))

Q13–2: *Record retention—evidence of compliance.* Must a financial institution retain records that it has given disclosures and documentation to *each* consumer?

A: No, it need only retain evidence demonstrating that its procedures reasonably ensure the consumer's receipt of the required disclosures and documentation. (§ 205.13(c)(1))

SECTION 205.14—Services Offered by Financial Institutions Not Holding Consumer's Account

Q14–1: *Applicability to preauthorized credits.* Does this section apply to an institution which initiates preauthorized electronic payroll deposits on behalf of the consumer's employer to the consumer's account at another financial institution?

A: No. This section applies only when the service-providing institution issues an access device to a consumer (a debit card or a code, for example) with which the consumer can initiate transfers to or from the consumer's account at another institution *and* the two institutions have no agreement with regard to this service. Because a code used to initiate telephone transfers is an access device, the section applies, for example, when a financial institution which holds a consumer's account periodically transfers funds to or from the consumer's account at another financial institution upon receiving instructions from the consumer on the telephone. (§ 205.14(a) and (c))

Q14–2: *Applicability of account at both institutions.* Does the fact that the consumer holds an account at both financial institutions involved in the transfer negate the application of this section?

A: No, assuming the institutions have no agreements with each other concerning the EFT service. (§ 205.14(a))

Q14–3: *Agreement.* If an ACH establishes arrangements in which its members agree to honor each other's EFT cards, is there an "agreement" for purposes of this section?

A: Yes. (§ 205.14(c))

Q14–4: *Periodic statement—service-providing institution.* Does the service-providing institution have to provide to the consumer a periodic statement showing transfers other than electronic fund transfers made with the service provider's access device?

A: No. Moreover, if the service provider complies with the conditions set forth in the regulation, it need not provide any periodic statement. (§ 205.14(a)(2)(i)–(v))

Q14–5: *Periodic statement—issuance of card.* If a service provider issues its own card but then allows the consumer to use another card (such as a bank-issued debit or credit card) to initiate transfers through the POS/ACH system, must it send periodic statements?

A: Yes. To qualify for the periodic-statement exception, the service provider must issue the debit card that will actually be used to initiate transfers. Similarly, a service provider that does not issue any debit card remains subject to the requirement to send periodic statements. (§ 205.14(a)(2)(i))

Q14–6: *Error resolution—responsibility of service-providing institution.* In a POS/ACH transaction, the consumer properly notifies the service-providing institution of an alleged error. What is the service provider's responsibility?

A: The service provider must investigate and resolve the error as set forth in the regulation. If an error in fact occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-

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holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider. (§§ 205.11 and 205.14(a)(3)–(6))

Q14–7: *Content of periodic statement—account-holding institution.* For POS/ACH transactions initiated by the service provider, is the account-holding institution required to disclose all the items specified in section 205.9(b) on its periodic statement?

A: No. Its periodic statement need contain only the information specified in section 205.9(b)(1). (§ 205.14(b)(1))

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Board of Governors of the Federal Reserve System

A-10299A

Regulation H
Membership of State Banking Institutions in the Federal Reserve System

12 CFR 208; as amended effective April 1, 1989

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

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Regulation H
Membership of State Banking Institutions in the Federal Reserve System

12 CFR 208; as amended effective April 1, 1989

SECTION 208.1—Definitions

For the purpose of this part*:

(a) The term *"state bank"* means any bank or trust company incorporated under a special or general law of a state or under a general law for the District of Columbia, any mutual savings bank (unless otherwise indicated), and any Morris Plan bank or other incorporated banking institution engaged in similar business.[1]

(b) The term *"mutual savings bank"* means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers, and in addition thereto includes any other banking institution the capital of which consists of weekly or other time deposits which are segregated from all other deposits and are regarded as capital stock for the purposes of taxation and the declaration of dividends.

(c) The term *"Board"* means the Board of Governors of the Federal Reserve System.

(d) The term *"board of directors"* means the governing board of any institution performing the usual functions of a board of directors.

(e) The term *"Federal Reserve Bank stock"* includes the deposit which may be made with a Federal Reserve Bank in lieu of a subscription for stock by a mutual savings bank which is not permitted to purchase stock in a Federal Reserve Bank, unless otherwise indicated.

(f) The terms *"capital"* and *"capital stock"* mean common stock, preferred stock and legally issued capital notes and debentures purchased by the Reconstruction Finance Corporation which may be considered capital and capital stock for purposes of membership in the Federal Reserve System under the provisions of section 9 of the Federal Reserve Act.

SECTION 208.2—Eligibility Requirements

(a) Under the terms of section 9 of the Federal Reserve Act, as amended, to be eligible for admission to membership in the Federal Reserve System:

(1) A state bank, other than a mutual savings bank, must possess capital stock and surplus which, in the judgment of the Board, are adequate in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities: *Provided,* That no bank engaged in the business of receiving deposits other than trust funds, which does not possess capital stock and surplus in an amount equal to that which would be required for the establishment of a national banking association in the place in which it is located, shall be admitted to membership unless it is, or has been, approved for deposit insurance under the Federal Deposit Insurance Act.

(2) A mutual savings bank must possess surplus and undivided profits not less than the amount of capital required for the organization of a national bank in the place where it is situated.

(b) The minimum capital required for the organization of a national bank, referred to hereinbefore in connection with the capital required for admission to membership in the Federal Reserve System, is as follows:

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* The words "this part" as used herein, mean Regulation H (Code of Federal Regulations, title 12, chapter II, part 208). The Board of Governors of the Federal Reserve System has delegated authority to exercise certain functions contained in this part. See the Board's "Rules Regarding Delegation of Authority" (12 CFR 265).

[1] Under the provisions of section 19 of the Federal Reserve Act, national banks and banks organized under local laws, located in a dependency or insular possession or any part of the United States outside the states of the United States and the District of Columbia are not required to become members of the Federal Reserve System but may, with the consent of the Board, become members of the System. However, this part 208 is applicable only to the admission of banks eligible for admission to membership under section 9 of the Federal Reserve Act and does not cover the admission of banks eligible under section 19 of the act. Any bank desiring to be admitted to the System under the provisions of section 19 should communicate with the Federal Reserve Bank with which it desires to do business.

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	Minimum capital
If located in a city or town with a population:	
Not exceeding 6,000 inhabitants	$ 50,000
Exceeding 6,000 but not exceeding 50,000 inhabitants	100,000
Exceeding 50,000 inhabitants (except as stated below)	200,000
In an outlying district of a city with a population exceeding 50,000 inhabitants; provided state law permits organization of state banks in such location with a capital of $100,000 or less	100,000

With certain exceptions not here applicable, a national bank must have surplus equal to 20 percent of its capital in order to commence business.

SECTION 208.3—Insurance of Deposits

Any state bank becoming a member of the Federal Reserve System which is engaged in the business of receiving deposits other than trust funds and which is not at the time an insured bank under the provisions of the Federal Deposit Insurance Act, will become an insured bank under the provisions of that act on the date upon which it becomes a member of the Federal Reserve System.[2] In the case of an insured bank which is admitted to membership in the Federal Reserve System, the bank will continue to be an insured bank.

SECTION 208.4—Application for Membership

(a) *State bank, other than a mutual savings bank.* A state bank, other than a mutual savings bank, applying for membership, shall make application on Form F.R. 83A to the Board for an amount of capital stock in the Federal Reserve Bank of its district equal to 6 percent of the paid-up capital stock and surplus of the applying institution.

(b) *Mutual savings bank.* A mutual savings bank applying for membership shall make application on Form F.R. 83B to the Board for an amount of capital stock in the Federal Reserve Bank of its District equal to six-tenths of 1 percent of its total deposit liabilities as shown by the most recent report of examination of such institution preceding its admission to membership, or, if such institution be not permitted by the laws under which it was organized to purchase stock in a Federal Reserve Bank, on Form F.R. 83C, for permission to deposit with the Federal Reserve Bank an amount equal to the amount which it would have been required to pay in on account of a subscription to capital stock.

(c) *Mutual savings bank which is not authorized to purchase stock of Federal Reserve Bank at time of admission.* If a mutual savings bank be admitted to membership on the basis of a deposit of the required amount with the Federal Reserve Bank in lieu of payment upon capital stock because the laws under which such bank was organized do not at that time authorize it to purchase stock in the Federal Reserve Bank, it shall subscribe on Form F.R. 83D for the appropriate amount of stock in the Federal Reserve Bank whenever such laws are amended so as to authorize it to purchase stock in a Federal Reserve Bank.[3]

(d) *Execution and filing of application.* Each application made under the provisions of this section and the exhibits referred to in the application blank shall be executed and filed, in duplicate, with the Federal Reserve Bank of the District in which the applying bank is located.

[2] In the case of a state bank which is engaged in the business of receiving deposits other than trust funds and which at the time of its admission to membership in the Federal Reserve System is not an insured bank, the Board is required under the provisions of sections 4 and 6 of the Federal Deposit Insurance Act to issue a certificate to the Federal Deposit Insurance Corporation to the effect that the bank is a member of the Federal Reserve System and that consideration has been given to the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

[3] The Federal Reserve Act provides that, if the laws under which any such savings bank was organized be not amended at the first session of the legislature following the admission of the savings bank to membership so as to authorize mutual savings banks to purchase Federal Reserve Bank stock, or if such laws be so amended and the bank fail within six months thereafter to purchase such stock, all of its rights and privileges as a member bank shall be forfeited and its membership in the Federal Reserve System shall be terminated in the manner prescribed in section 9 of the Federal Reserve Act.

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SECTION 208.5—Approval of Application

(a) *Matters given special consideration by Board.* In passing upon an application, the following matters will be given special consideration:

(1) The financial history and condition of the applying bank and the general character of its management;

(2) The adequacy of its capital structure in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities; and its future earnings prospects;

(3) The convenience and needs of the community to be served by the bank; and

(4) Whether its corporate powers are consistent with the purposes of the Federal Reserve Act.

(b) *Procedure for admission to membership after approval of application.* If an applying bank conforms to all the requirements of the Federal Reserve Act and this part and is otherwise qualified for membership, its application will be approved subject to such conditions as may be prescribed pursuant to the provisions of the Federal Reserve Act. When the conditions prescribed have been accepted by the applying bank, it should pay to the Federal Reserve Bank of its District one-half of the amount of its subscription and, upon receipt of advice from the Federal Reserve Bank as to the required amount, one-half of 1 percent of its paid-up subscription for each month from the period of the last dividend.[4] The remaining half of the bank's subscription shall be subject to call when deemed necessary by the Board. The bank's membership in the Federal Reserve System shall become effective on the date as of which a certificate of stock of the Federal Reserve Bank is issued to it pursuant to its application for membership or, in the case of a mutual savings bank which is not authorized to subscribe for stock, on the date as of which a certificate representing the acceptance of a deposit with the Federal Reserve Bank in place of a payment on account of a subscription to stock is issued to it pursuant to its application for membership.

SECTION 208.6—Privileges and Requirements of Membership

Every state bank while a member of the Federal Reserve System—

(a) Shall retain its full charter and statutory rights subject to the provisions of the Federal Reserve Act and other acts of Congress applicable to member state banks, to the regulations of the Board made pursuant to law, and to the conditions prescribed by the Board and agreed to by such bank prior to its admission;

(b) Shall enjoy all the privileges and observe all the requirements of the Federal Reserve Act and other acts of Congress applicable to member state banks and of the regulations of the Board made pursuant to law which are applicable to member state banks;

(c) Shall comply at all times with any and all conditions of membership prescribed by the Board in connection with the admission of such bank to membership in the Federal Reserve System; and

(d) Shall not reduce its capital stock except with the prior consent of the Board.[5]

SECTION 208.7—Conditions of Membership

(a) Pursuant to the authority contained in the first paragraph of section 9 of the Federal Reserve Act, which authorizes the Board to permit applying state banks to become members of the Federal Reserve System "subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto," the Board, except as hereinafter stated, will prescribe the following conditions of membership for each state bank hereafter applying for

[4] In the case of a mutual savings bank which is not permitted by the laws under which it was organized to purchase stock in a Federal Reserve Bank, it shall deposit with the Federal Reserve Bank an amount equal to the amount which it would have been required to pay in on account of a subscription to capital stock.

[5] This applies to capital stock of all classes and to capital notes and debentures legally issued and purchased by the Reconstruction Finance Corporation which, under the Federal Reserve Act, are considered as capital stock for purposes of membership.

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admission to the Federal Reserve System, and, in addition, such other conditions as may be considered necessary or advisable in the particular case:

(1) Such bank at all times shall conduct its business and exercise its powers with due regard to the safety of its depositors, and, except with the permission of the Board of Governors of the Federal Reserve System, such bank shall not cause or permit any change to be made in the general character of its business or in the scope of the corporate powers exercised by it at the time of admission to membership.[6]

(2) The net capital and surplus funds of such bank shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities.

(b) The acquisition by a member state bank of the assets of another institution through merger, consolidation, or purchase may result in a change in the general character of its business or in the scope of its corporate powers within the meaning of the condition set forth in paragraph (a)(1) of this section, and if at any time a bank subject to such condition anticipates making any such acquisition a detailed report setting forth all the facts in connection with the transaction shall be made promptly to the Federal Reserve Bank of the District in which such bank is located.

(c) If at any time, in the light of all the circumstances, the aggregate amount of a member state bank's net capital and surplus funds appears to be inadequate, the bank, within such period as shall be deemed by the Board to be reasonable for this purpose, shall increase the amount thereof to an amount which in the judgment of the Board shall be adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities.

[6] For many years, the Board prescribed, as standard conditions of membership, a condition which, in general, prohibited banks from engaging as a business in the sale of real estate loans to the public and certain conditions relating to the exercise of trust powers, including one which prohibited self-dealing in the investment of trust funds. The elimination of these conditions as standard conditions of membership does not reflect any change in the Board's position as to the undesirability of the practices formerly prohibited by such conditions; and attention is called to the fact that engaging as a business in the sale of real estate loans to the public or failing to conduct trust business in accordance with the applicable state laws and sound principles of trust administration may constitute unsafe or unsound practices and violate the condition set forth in this subparagraph.

SECTION 208.8—Banking Practices

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

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

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

(d) *Letters of credit and acceptances*

(1) *Definitions.* For the purpose of this paragraph, "standby letters of credit" include every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuer (1) to repay

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money borrowed by or advanced to or for the account of the account party or (2) to make payment on account of any evidence of indebtedness undertaken by the account party, or (3) to make payment on account of any default by the account party in the performance of an obligation.[6a] An "ineligible acceptance" is a time draft accepted by a bank, which does not meet the requirements for discount with a Federal Reserve Bank.

(2) *Restrictions.*

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

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

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

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

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

(4) *Exceptions.* A standby letter of credit is not subject to the restrictions set forth above in the following situations:

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

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

(e) *Loans by state member banks in identified flood hazard areas.* (1) Property securing loan must be insured against flood. No state member bank shall make, increase, extend or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the

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

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building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or to the maximum limit of coverage made available with respect to the particular type of property under the act, whichever is less. Notwithstanding the foregoing provision, flood insurance shall not be required on any state-owned property that is covered under an adequate policy of self-insurance satisfactory to the secretary of Housing and Urban Development who shall publish and periodically revise the list of states falling within the exemption provided in this paragraph.

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

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

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

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

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

(2) If the information contained in Form TA-1 becomes inaccurate, misleading or incomplete for any reason, the bank or its subsidiary shall, within 60 calendar days thereafter, file an amendment to Form TA-1 correcting the inaccurate, misleading or incomplete information.

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

(g) *State member banks as registered clearing agencies.*

(1) *Requirement of notice.* Any state member bank or any of its subsidiaries that is a registered clearing agency pursuant to section 17A(b) of the Securities Exchange Act of 1934 (the "act"), which imposes any final disciplinary sanction on any participant therein, denies participation to any applicant or prohibits or limits any person in respect to access to services offered by such registered clearing agency, shall file with the Board and the appropriate regulatory agency (if other than the Board) for a participant or applicant notice thereof in the manner prescribed herein.

(2) *Notice of final disciplinary action.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final disciplinary action with respect to any participant shall promptly file a notice thereof with the Board in accordance with paragraph (g)(3) of this section. For the purposes of this paragraph "final disciplinary action" shall mean the imposition of any disciplinary sanction pursuant to section 17A(b)(3)(G) of the act or other action of a registered clearing agency which, after notice and opportunity for hearing, results in any final disposition of charges of:

(i) one or more violations of the rules of such registered clearing agency; or

(ii) acts or practices constituting a statutory disqualification of a type defined in subparagraph (iv) or (v) (except prior convictions) of section 3(a)(39) of the act.

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

(3) *Content of notice required by paragraph (g)(2).* Any notice filed pursuant to paragraph (g)(2) of this section shall consist of the following, as appropriate:

(i) the name of the respondent concerned together with the respondent's last known address as reflected on the records of the registered clearing agency and the name of the person, committee, or other organizational unit that brought the charges involved; except that, as to any respondent who has been found not to have violated a provision covered by a charge, identifying information with respect to such person may be deleted insofar as the notice reports the disposition of that charge and, prior to the filing of the notice, the respondent does not request that identifying information be included in the notice.

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

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

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

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

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

(4) *Notice of final denial, prohibition, ter-*

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

(i) comply with the qualification standards prescribed by the rules of such registered clearing agency pursuant to section 17A(b)(4)(B) of the act; or

(ii) comply with any administrative requirements of such registered clearing agency (including failure to pay entry or other dues or fees or to file prescribed forms or reports) not involving charges of violations which may lead to a disciplinary sanction

shall not be considered a "final disciplinary action" for purposes of paragraph (g)(2) of this section, but notice thereof shall be promptly filed with the Board and the appropriate regulatory agency (if other than the Board) for the affected person in accordance with paragraph (g)(5) of this section; provided however, that no such action shall be considered "final" pursuant to this subparagraph that results merely from a notice of such failure to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted his administrative remedies within the registered clearing agency with respect to such a matter.

(5) *Content of notice required by paragraph (g)(4).* Any notice filed pursuant to paragraph (g)(4) of this section shall consist of the following, as appropriate:

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

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

(iii) a statement setting forth findings of fact and conclusions as to each alleged failure of the person to comply with qualification standards, or comply with administrative obligations, and a statement of the registered clearing agency in support of the resolution of the principal issues raised in the proceeding;

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

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

(6) *Notice of final action based upon prior adjudicated statutory disqualifications.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action with respect to any person that:

(i) denies or conditions participation to any person or prohibits or limits access to service offered by such registered clearing agency; and

(ii) is based upon a statutory disqualification of a type defined in subparagraph (A), (B) or (C) of section 3(a)(39) of the act of consisting of a prior conviction as described in subparagraph (E) of said section 3(a)(39) shall promptly file notice thereof with the Board and the appropriate regulatory agency (if other than the Board) for the affected person in accordance with paragraph (g)(7) of this section; provided, however, that no such action shall be considered "final" pursuant to this subparagraph which results merely from a notice of such failure to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted his administrative remedies within the registered clearing agency with respect to such a matter.

(7) *Content of notice required by paragraph (g)(6).* Any notice filed pursuant to paragraph (g)(6) of this section shall consist of the following, as appropriate:

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

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

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

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

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

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

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

(9) *Content of notice of summary suspension of participation.* Any notice pursuant to paragraph (g)(8) of this section shall contain at least the following information, as appropriate:

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

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

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

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

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

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

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

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

(i) *Application for review of final disciplinary sanctions, denials of participation or prohibitions or limitations of access to services imposed by registered clearing agencies.*

(1) *Scope.* Proceedings on an application to the Board under section 19(d)(2) of the act by a person that is subject to the Board's jurisdiction for review of any action by a registered clearing agency for which the Securities and Exchange Commission is not the appropriate regulatory agency shall be governed by this paragraph.

(2) *Procedure.*

(i) An application for review pursuant to section 19(d)(2) of the act shall be filed with the Board within 30 days after notice is filed by the registered clearing agency pursuant to section 19(d)(1) of the act and received by the aggrieved person applying for review, or within such longer period as the Board may determine. The secretary of the Board shall

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serve a copy of the application on the registered clearing agency, which shall, within 10 days after receipt of the application, certify and file with the Board one copy of the record upon which the action complained was taken, together with three copies of an index to such record. The secretary shall serve upon the parties copies of such index and any papers subsequently filed.

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

(iii) Within 20 days after receipt of the applicant's brief or statement the registered clearing agency may file an answer thereto, and within 10 days of receipt of any such answer the applicant may file a reply. Any such papers not filed within the time provided by items (A), (B), or (C) will not be received except upon special permission of the Board.

(iv) On its own motion, the Board may direct that the record under review be supplemented with such additional evidence as it may deem relevant. Nevertheless, the registered clearing agency and persons who may be aggrieved by such clearing agency's action shall not be entitled to adduce evidence not presented in the proceedings before the registered clearing agency unless it is shown to the satisfaction of the Board that such additional evidence is material and that there were reasonable grounds for failure to present such evidence in the proceedings before the registered clearing agency. Any request for leave to adduce additional evidence shall be filed promptly so as not to delay the disposition of the proceeding.

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

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

(B) by the registered clearing agency with its answer.

The Board, in its discretion, may grant or deny any request for oral argument and, where it deems it appropriate to do so, the Board will consider an application on the basis of the papers filed by the parties, without oral argument.

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

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

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

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

(3) Whenever a municipal securities dealer

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

(4) Within 30 days after the termination of the association of a municipal securities principal or municipal securities representative with a municipal dealer that has filed a Form MSD-4 with the Board for that person pursuant to paragraph(j)(2) of this section, such dealer shall file an original and two copies of a notification of termination with the Board on Form MSD-5, "Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer," completed in accordance with instructions contained therein.

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

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

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

(1) *Definitions.* For purposes of this paragraph (k): (i) "customer" shall mean any person or account, including any agency, trust, estate, guardianship, committee or other fiduciary account, for which a state member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities which are the subject of the transactions;

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

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

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

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

(2) *Recordkeeping.* Every state member bank effecting securities transactions for customers shall maintain the following records with respect to such transactions for at least three years:

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

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

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

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

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

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

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

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

(F) the broker-dealer utilized;

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

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

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

(i) (A) a copy of the confirmation of a broker-dealer relating to the securities transaction; and (B) if the bank is to receive remuneration from the customer or any other source in connection with the

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transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(ii) a written notification disclosing:

(A) the name of the bank;

(B) the name of the customer;

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

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

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

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

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

(4) *Time of notification.* The time for mailing or otherwise furnishing the written notification described in paragraph (k)(3) of this section shall be five business days from the date of the transaction, or if a broker-dealer is utilized, within five business days from the receipt by the bank of the broker-dealer's confirmation, but the bank may elect to use the following alternative procedures if the transaction is effected for:

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

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

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

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

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

(5) *Securities trading policies and procedures.* Every state member bank effecting securities transactions for customers shall establish written policies and procedures providing:

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

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

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

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

(6) *Exceptions.* The following exceptions to paragraph (k) shall apply:

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

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

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

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SECTION 208.9—Establishment or Maintenance of Branches

(a) *In general.* Every state bank which is or hereafter becomes a member of the Federal Reserve System is subject to the provisions of section 9 of the Federal Reserve Act relating to the establishment and maintenance of branches [7] in the United States or in a dependency or insular possession thereof or in a foreign country. Under the provisions of section 9, member state banks establishing and operating branches in the United States beyond the corporate limits of the city, town, or village in which the parent bank is situated must conform to the same terms, conditions, limitations, and restrictions as are applicable to the establishment of branches by national banks under the provisions of section 5155 of the Revised Statutes of the United States relating to the establishment of branches in the United States, except that the approval of any such branches must be obtained from the Board rather than from the Comptroller of the Currency. The approval of the Board must likewise be obtained before any member state bank establishes any branch after July 15, 1952, within the corporate limits of the city, town, or village in which the parent bank is situated (except within the District of Columbia). Under the provisions of section 9, member state banks establishing and operating branches in a dependency or insular possession of the United States or in a foreign country must conform to the terms, conditions, limitations, and restrictions contained in section 25 of the Federal Reserve Act relating to the establishment by national banks of branches in such places.

(b) *Branches in the United States.* (1) Before a member state bank establishes a branch (except within the District of Columbia), it must obtain the approval of the Board.

(2) Before any nonmember state bank having a branch or branches established after February 25, 1927, beyond the corporate limits of the city, town, or village in which the bank is situated is admitted to membership in the Federal Reserve System, it must obtain the approval of the Board for the retention of such branches.

(3) A member state bank located in a state which by statute law permits the maintenance of branches within county or greater limits may, with the approval of the Board, establish and operate, without regard to the capital requirements of section 5155 of the Revised Statutes, a seasonal agency in any resort community within the limits of the county in which the main office of such bank is located for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto, if no bank is located and doing business in the place where the proposed agency is to be located; and any permit issued for the establishment of such an agency shall be revoked upon the opening of a state or national bank in the community where the agency is located.

(4) Except as stated in paragraph (b)(3) of this section, in order for a member state bank to establish a branch beyond the corporate limits of the city, town, or village in which it is situated, the aggregate capital stock of the member state bank and its branches shall at no time be less than the aggregate minimum capital stock required by law for the establishment of an equal number of national banking associations situated in the various places where such member state bank and its branches are situated.[8]

(5) A member state bank may not establish a branch beyond the corporate limits of the city, town, or village in which it is situated unless such establishment and operation are at the time authorized to state banks by the statute law of the state in

[7] Section 5155 of the Revised Statutes of the United States provides that: "(f) The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent."

[8] The requirement of this paragraph is met if the aggregate capital stock of a member state bank having branches is not less than the total amount of capital stock which would be required for the establishment of one national bank in each of the places in which the head office and branches of the member state bank are located, irrespective of the number of offices which the bank may have in any such place. There are no additional capital requirements for additional branches within the city, town, or village in which the head office is located.

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question by language specifically granting such authority affirmatively and not merely by implication or recognition.

(6) Any member state bank which, on February 25, 1927, had established and was actually operating a branch or branches in conformity with the state law is permitted to retain and operate the same while remaining a member of the Federal Reserve System, regardless of the location of such branch or branches.

(7) The removal of a branch of a member state bank from one town to another town constitutes the establishment of a branch in such other town and, accordingly, requires the approval of the Board. The removal of a branch of a member state bank from one location in a town to another location in the same town will require the approval of the Board if the circumstances of the removal are such that the effect thereof is to constitute the establishment of a new branch as distinguished from the mere relocation of an existing branch in the immediate neighborhood without affecting the nature of its business or customers served.

(c) *Application for approval of branches in United States.* Any member state bank desiring to establish a branch should submit a request for the approval by the Board of any such branch to the Federal Reserve Bank of the district in which the bank is located. Any nonmember state bank applying for membership and desiring to retain any branch established after February 25, 1927, beyond the corporate limits of the city, town, or village in which the bank is situated should submit a similar request. Any such request should be accompanied by advice as to the scope of the functions and the character of the business which are or will be performed by the branch and detailed information regarding the policy followed or proposed to be followed with reference to supervision of the branch by the head office; and the bank may be required in any case to furnish additional information which will be helpful to the Board in determining whether to approve such request.

(d) *Foreign branches.* With prior Board approval, a member state bank having capital and surplus of $1,000,000 or more may establish branches in "foreign countries", as defined in section 211.2(f) of Regulation K (12 CFR 211.2(f)). If a member state bank has established a branch in such a country, it may, unless otherwise advised by the Board, establish other branches therein after 30 days' notice to the Board with respect to each such branch.

(e) *Application for approval of foreign branches.* Any member state bank desiring to establish such a branch and any nonmember state bank applying for membership and desiring to retain any such branch established after February 25, 1927, should submit a request for the approval by the Board of any such branch to the Federal Reserve Bank of the District in which the bank is located. Any such request should be accompanied by advice as to the scope of the functions and the character of the business which are or will be performed by the branch and detailed information regarding the policy followed or proposed to be followed with reference to supervision of the branch by the head office; and the bank may be required in any case to furnish additional information which will be helpful to the Board in determining whether to approve such request.

SECTION 208.10—Publication of Reports of Member Banks and Their Affiliates [9]

(a) *Reports of member banks.* (1) Each report of condition made by a member state bank to its Federal Reserve Bank pursuant to a call therefor by the Board shall be pub-

[9] Under the provisions of section 9 of the Federal Reserve Act, reports of condition of member state banks which, under that section, must be made to the respective Federal Reserve Banks on call dates fixed by the Board of Governors of the Federal Reserve System "shall be published by the reporting banks in such manner and in accordance with such regulations as the said Board may prescribe."

Section 9 also provides that the reports of affiliates of a member state bank which are required by that section to be furnished to the respective Federal Reserve Banks "shall be published by the bank under the same conditions as govern its own condition reports". The term "affiliates," as used in this provision of section 9, under the express terms of that section, includes "holding company affiliates as well as other affiliates," but a member state bank is not required to furnish to a Federal Reserve Bank the report of an affiliated member bank.

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lished by such member bank within 20 days from the date the call is issued, unless such time is extended by the Reserve Bank as provided in section 265.2(f) (16) of this chapter (Rules Regarding Delegation of Authority).

(2) The report shall be printed in a newspaper published in the place where the bank is located or, if there be no newspaper published in the place where the bank is located, then in a newspaper published in the same or in an adjoining county and in general circulation in the place where the bank is located. The term "newspaper", for the purpose of this Part, means a publication with a general circulation published not less frequently than once a week, one of the primary functions of which is the dissemination of news of general interest.

(3) The copy of the report for the use of the printer for publication should be prepared on the form supplied or authorized for the purpose by the Federal Reserve Bank. Except as permitted in the Instructions for preparation of reports of condition (Forms FFIEC 031-034), the published information shall agree in every respect with that shown on the face of the report of condition submitted to the Federal Reserve Bank. All signatures shall be the same in the published statement (although they may be typed or otherwise copied on the report for publication):

(i) as in the original report submitted to the Federal Reserve Bank if the bank does not submit its report of condition electronically, or

(ii) as retained in the bank's files in hard copy if the bank has filed its report of condition electronically. The hard copy retained in the bank's file must be made available to examiners upon request.

(4) A copy of the printed report shall be retained in the bank's files and made available to examiners upon request.

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

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

(3) A copy of the printed report shall be submitted to the Federal Reserve Bank.

(c) *Waiver of reports of affiliates.* Pursuant to section 21 of the Federal Reserve Act (12

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

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USC 486), the Board of Governors of the Federal Reserve System waives the requirement for the submission of reports of affiliates of state bank members of the Federal Reserve System, unless such reports are specifically requested by the Board of Governors. The Board of Governors of the Federal Reserve System may require the submission of reports which are necessary to disclose fully relations between member banks and their affiliates and the effect thereof upon the affairs of member banks.

SECTION 208.11—Voluntary Withdrawal from Federal Reserve System

(a) *General.* Any state bank desiring to withdraw from membership in a Federal Reserve Bank may do so after six months' written notice has been filed with the Board;[11] and the Board, in its discretion, may waive such six months' notice in any individual case and may permit such bank to withdraw from membership in a Federal Reserve Bank, subject to such conditions as the Board may prescribe, prior to the expiration of six months from the date of the written notice of its intention to withdraw.

(b) *Notice of intention of withdrawal.* (1) Any state bank desiring to withdraw from membership in a Federal Reserve Bank should signify its intention to do so, with the reasons therefor, in a letter addressed to the Board and mailed to the Federal Reserve Bank of which such bank is a member. Any such bank desiring to withdraw from membership prior to the expiration of six months from the date of written notice of its intention to withdraw should so state in the letter signifying its intention to withdraw and should state the reason for its desire to withdraw prior to the expiration of six months.

(2) Every notice of intention of a bank to withdraw from membership in the Federal Reserve System and every application for the waiver of such notice should be accompanied by a certified copy of a resolution duly adopted by the board of directors of such bank authorizing the withdrawal of such bank from membership in the Federal Reserve System and authorizing a certain officer or certain officers of such bank to file such notice or application, to surrender for cancellation the Federal Reserve Bank stock held by such bank, to receive and receipt for any moneys or other property due to such bank from the Federal Reserve Bank and to do such other things as may be necessary to effect the withdrawal of such bank from membership in the Federal Reserve System.

(3) Notice of intention to withdraw or application for waiver of six months' notice of intention to withdraw by any bank which is in the hands of a conservator or other state official acting in a capacity similar to that of a conservator should be accompanied by advice from the conservator or other such state official that he joins in such notice or application.

(c) *Time and method of effecting actual withdrawal.* Upon the expiration of six months after notice of intention to withdraw or upon the waiving of such six months' notice by the Board, such bank may surrender its stock and its certificate of membership to the Federal Reserve Bank and request that same be canceled and that all amounts due to it from the Federal Reserve Bank be refunded.[12] Unless

[11] Under specific provisions of section 9 of the Federal Reserve Act, however, no Federal Reserve Bank shall, except upon express authority of the Board, cancel within the same calendar year more than 25 percent of its capital stock for the purpose of effecting voluntary withdrawals during that year. All applications for voluntary withdrawals are required by the law to be dealt with in the order in which they are filed with the Board.

[12] A bank's withdrawal from membership in the Federal Reserve System is effective on the date on which the Federal Reserve Bank stock held by it is duly canceled. Until such stock has been canceled, such bank remains a member of the Federal Reserve System, is entitled to all the privileges of membership, and is required to comply with all provisions of law and all regulations of the Board pertaining to member banks and with all conditions of membership applicable to it. Upon the cancellation of such stock, all rights and privileges of such bank as a member bank shall terminate.

Upon the cancellation of such stock, and after due provision has been made for any indebtedness due or to become due to the Federal Reserve Bank, such bank shall be entitled to a refund of its cash paid subscription with interest at the rate of one-half of 1 percent per month from the date of last dividend, the amount refunded in no event to exceed the book value of the stock at that time, and shall likewise be entitled to the repayment of deposits and of any other balance due from the Federal Reserve Bank.

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withdrawal is thus effected within eight months after notice of intention to withdraw is first given, or unless the bank requests and the Board grants an extension of time, such bank will be presumed to have abandoned its intention of withdrawing from membership and will not be permitted to withdraw without again giving six months' written notice or obtaining the waiver of such notice.

(d) *Withdrawal of notice.* Any bank which has given notice of its intention to withdraw from membership in a Federal Reserve Bank may withdraw such notice at any time before its stock has been canceled and upon doing so may remain a member of the Federal Reserve System. The notice rescinding the former notice should be accompanied by a certified copy of an appropriate resolution duly adopted by the board of directors of the bank.

SECTION 208.12—Board Forms

All forms referred to in this part and all such forms as they may be amended from time to time shall be a part of the regulations in this part.

SECTION 208.13—Capital Adequacy

The standards and guidelines by which the capital adequacy of state member banks will be evaluated by the Board are set forth in appendix A to part 208 for risk-based capital purposes, and in appendix B to the Board's Regulation Y, 12 CFR 225 with respect to the ratios relating capital to total assets.*

SECTION 208.14—Procedures for Monitoring Bank Secrecy Act Compliance

(a) *Purpose.* This section in issued to ensure that all state member banks establish and maintain procedures reasonably designed to ensure and monitor their compliance with the provisions of subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR 103, requiring recordkeeping and reporting of currency transactions.[13]

(b) *Establishment of compliance program.* On or before April 27, 1987, each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(c) *Contents of compliance program.* The compliance program shall, at a minimum—

(1) provide for a system of internal controls to ensure ongoing compliance;

(2) provide for independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) provide training for appropriate personnel.

SECTION 208.15—Agricultural Loan Loss Amortization

(a) *Definitions.* For purposes of this section—

(1) "Agricultural bank" means a bank—

(i) the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) which is located in an area of the country the economy of which is dependent on agriculture;

(iii) which has total assets of $100,000,000 or less as of the most recent Report of Condition; and

* These are printed in a separate Board pamphlet, "Capital Adequacy Guidelines."

[13] Recordkeeping requirements contained in this section have been approved by the Board under delegated authority from the Office of Management and Budget under the provisions of chapter 35 of title 44, United States Code, and have been assigned OMB No. 7100–0196.

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(iv) which has—

(A) at least 25 percent of its total loans in qualified agricultural loans and agriculturally related other property; or

(B) less than 25 percent of its total loans in qualified agricultural loans and agriculturally related other property, but which bank the Board or the Reserve Bank in whose District the bank is located or its primary state regulator has recommended to the Federal Deposit Insurance Corporation for eligibility under this part.

(2) "Qualified agricultural loan" means—

(i) loans qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purposes of Schedule RC-C of the FFIEC Consolidated Report of Condition or such other comparable schedule;

(ii) loans secured by farm machinery;

(iii) other loans that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Federal Reserve; and in whose District the bank is located; and

(iv) the remaining unpaid balance of any loans, described in (i), (ii), and (iii), that have been charged off since January 1, 1984, and that qualify for deferral under this section.

(3) "Accepting official" means—

(i) the Reserve Bank in whose District the bank is located; or

(ii) the director of the Division of Banking Supervision and Regulation in cases in which the Reserve Bank cannot determine that the bank qualifies under the regulation.

(4) "Agriculturally related other property" means any property, real or personal, that the bank owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992, in connection with a qualified agricultural loan. For the purposes of sections 208.15(a)(1)(iv) and 208.15(e), the value of such property shall include the amount previously charged off as loss.

(b) *Loss amortization and reappraisal.*

(1) Provided that there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, its officers, directors, or principal shareholders, a bank that has been accepted under this section may, in the manner described below, amortize in its Reports of Condition and Income—

(i) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1984 and 1991.

(ii) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 and 1991 resulting from a reappraisal or sale of agriculturally related other property.

(2) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loan was or is charged off so as to be fully amortized not later than December 31, 1998.

(c) *Accounting for amortization.* Any bank which is permitted to amortize losses in accordance with paragraph (b), above, may restate its capital and other relevant accounts and account for future authorized deferrals and amortizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in primary capital as per section 208.13 of this part.

(d) *Eligibility.* A proposal submitted in accord with paragraph (f) shall be accepted, subject to the conditions described in paragraph (e), if the accepting official finds—

(1) the proposing bank is an agricultural bank;

(2) the proposing bank's current capital is in need of restoration, but the bank remains an economically viable, fundamentally sound institution;

(3) there is no evidence that fraud or criminal abuse by the bank or its officers, directors, or principal shareholders led to significant losses on qualified agricultural loans or

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from a reappraisal or sale of agriculturally related other property;

(4) the proposing bank has submitted a capital plan approved by the accepting official that will restore its capital to an acceptable level.

(e) *Conditions on acceptance.* All acceptances of proposals shall be subject to the following conditions:

(1) the bank shall fully adhere to the approved capital plan and shall obtain the prior approval of the accepting official for any modifications to the plan;

(2) with respect to each asset subject to loss deferral under the program, the bank shall maintain accounting records adequate to document the amount and timing of the deferrals, repayments and amortizations;

(3) the financial condition of the bank shall not deteriorate to the point where it is no longer a viable, fundamentally sound institution;

(4) the bank agrees to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans, including agriculturally related other property, not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

(5) the bank shall agree to provide the accepting official, upon request, with such information as the accepting official deems necessary to monitor the bank's amortization, its compliance with conditions, and its continued eligibility.

(f) *Submission of proposals.*

(1) A bank wishing to amortize losses on qualified agricultural loans or from reappraisal or sale of agriculturally related other property shall submit a proposal to the appropriate accepting official.

(2) The proposal shall contain the following information:

(i) name and address of the bank;

(ii) information establishing that the bank is located in an area the economy of which is dependent on agriculture; the information could consist of a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that it is located in such an area.

(iii) a copy of the bank's most recent Report of Condition and Income;

(iv) if the Report of Condition and Income fails to show that at least 25 percent of the bank's total loans are qualified agricultural loans, the basis upon which the bank believes that it should be declared eligible to amortize losses;

(v) a capital plan demonstrating that the bank will achieve an acceptable capital level not later than the end of the bank's amortization period. The plan should provide for a realistic improvement in the bank's capital, over the course of the amortization period, from earnings retention, capital injections, or other sources; and include specific information regarding dividend levels, compensation to directors, executive officers and individuals who have a controlling interest and in turn to their related interests, and payments for services or products furnished by affiliated companies.

(vi) a list of the loans and agriculturally related other property upon which the bank proposes to defer loss, including for each such loan or property the following information:

(A) the name of the borrower, the amount of the loan that resulted in the loss, and the amount of the loss;

(B) the date on which the loss was declared;

(C) the basis upon which the loss resulted from a qualified agricultural loan;

(vii) a certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors, or principal shareholders;

(viii) a copy of a resolution by the bank's Board of Directors authorizing submission of the proposal; and

(ix) such other information as the accepting official may require.

(g) *Revocation of eligibility.* The failure to comply with any condition in an acceptance

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or with the capital restoration plan is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 USC 1818(b). Additionally, acceptance of a bank for loss amortization will not foreclose any administrative action against the bank that the Board may deem appropriate.

SECTION 208.16—Reporting Requirements for State Member Banks Subject to the Securities Exchange Act of 1934

(a) *Filing requirements.* Except as otherwise provided in this section, a state member bank the securities of which are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the "1934 act") (15 USC 78*l*(b) and (g)) shall comply with the rules, regulations and forms adopted by the Securities and Exchange Commission ("Commission") pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 USC 78*l*, 78m, 78n(a), (c), (d), (f) and 78p). The term "Commission" as used in those rules and regulations shall with respect to securities issued by state member banks be deemed to refer to the Board unless the context otherwise requires.

(b) *Elections permitted of state member banks with total assets of $150 million or less.*

(1) Notwithstanding paragraph (a) of this section or the rules and regulations promulgated by the Commission pursuant to the 1934 act, a state member bank that has total assets of $150 million or less as of the end of its most recent fiscal year and no foreign offices may elect to substitute for the financial statements required by the Commission's Form 10-Q the balance sheet and income statement from the quarterly report of condition required to be filed by such bank with the Board under section 9 of the Federal Reserve Act (12 USC 324) (Federal Financial Institutions Examination Council Forms 033 or 034).

(2) A state member bank may not elect to file financial statements from its quarterly report of condition pursuant to paragraph (1) if the amounts reported for net income, total assets or total equity capital in those statements, which are prepared on the basis of federal bank regulatory reporting standards, would differ materially from such amounts reported in financial statements prepared in accordance with generally accepted accounting principles (GAAP).

(3) A state member bank qualifying for and electing to file financial statements from its quarterly report of condition pursuant to paragraph (1) in its Form 10-Q shall include earnings per share or net loss per share data prepared in accordance with GAAP and disclose any material contingencies as required by article 10 of the Commission's Regulation S-X (15 CFR 210.10-01), in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of Form 10-Q.

(c) *Filing instructions, inspection of documents, and nondisclosure of certain information filed.*

(1) All papers required to be filed with the Board pursuant to the 1934 act or regulations thereunder shall be submitted to the Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. 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.

(2) No filing fees specified by the Commission's rules shall be paid to the Board.

(3) Copies of the registration statement, definitive proxy solicitation materials, reports and annual reports to shareholders required by this section (exclusive of exhibits) will be available for public inspection at the Board's offices in Washington, D.C., as well as at the Federal Reserve Banks of New York, Chicago, and San Francisco and at the Reserve Bank in the District in which the reporting bank is located.

(4) Any person filing any statement, report, or document under the 1934 act may make written objection to the public disclosure of any information contained therein

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in accordance with the procedure set forth below:

(i) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that the person desires to keep undisclosed (hereinafter called the confidential portion). The person 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.

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

(A) 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. Each copy of the confidential portion 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; and

(B) 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 (1) identify the portion of the statement, report, or document that has been omitted, (2) include a statement of the grounds of objection, and (3) include 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.

(iii) Pending the determination by the Board on the objection filed in accordance with this paragraph, the confidential portion will not be disclosed by the Board.

(iv) 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.

(v) If the Board determines that the objection shall not be sustained because 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.

(vi) If the Board determines that the objection shall not be sustained pursuant to paragraph (c)(4)(v), the confidential portion shall be made available to the public—

(A) 15 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (c)(4)(v) of this section, provided that the person filing the objection has not previously filed with the Board a written statement that he intends in good faith to seek judicial review of the finding and determination;

(B) 60 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (c)(4)(v) of this section and the person filing the objection has filed with the Board a written statement that he intends to seek judicial review of the finding and determination but has failed to file a petition for judicial review of the Board's determination; or

(C) upon final judicial determination, if adverse to the party filing the objection.

(vii) 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.

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SECTION 208.17—Disclosure of Financial Information by State Member Banks

(a) *Purpose and scope.* The purpose of this section is to facilitate the dissemination of publicly available information regarding the financial condition of state member banks, state-licensed agencies of foreign banks, and state-licensed branches of foreign banks that are not insured by the Federal Deposit Insurance Corporation. This section requires all state-chartered banks that are members of the Federal Reserve System and all other covered institutions (1) to make year-end call reports or Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks or, in the case of state member banks, other alternative financial information, available to shareholders, customers, and the general public upon request; and (2) to advise shareholders and the public of the availability of this information. This section does not amend or modify the publication requirements of section 208.10, or any other section of this regulation.

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

(1) "Call report" means the Consolidated Reports of Condition and Income (OMB No. 7100-0036) filed pursuant to 12 USC 324 and section 208.10 of this regulation (12 CFR 208.10).

(2) "State member bank" means a bank that is chartered by a state and is a member of the Federal Reserve System.

(3) "Other covered institutions" means state-licensed agencies of foreign banks, or state-licensed branches of foreign banks that are not insured by the Federal Deposit Insurance Corporation.

(c) *Availability of financial information.*

(1) *Shareholders.* Each state member bank shall advise its shareholders, by a written announcement, which may be included in the notice of the annual shareholders' meeting, that one copy of certain financial information is available free of charge upon request. The announcement shall include, at a minimum, an address or telephone number to which requests may be directed.

(2) *General public.* State member banks and other covered institutions shall use reasonable means at their disposal to advise the public of the availability of information pursuant to this section. Bankers' banks, as defined by the Federal Reserve Act, as amended by the Monetary Control Act of 1980 (title I of Pub. L. 96-221), and 12 CFR 204.121, are exempt from this requirement. The notification to the public shall state that one copy of the information is available free of charge upon request and state an address or telephone number to which requests may be directed.

(d) *Financial information to be provided by state member banks.* The bank shall have discretion to determine which type of information, identified in this subsection, to release. The bank shall make the information it chooses to release available as soon as is reasonably possible but not later than April 1 of the year immediately following the end of the year to which the most recently available information pertains. State member banks shall fulfill the requirements of this section by providing, upon request, at least one free copy to each requestor of the following information:

(1) copies of their entire call report for the most recent year-end and the prior year-end, excluding any information for which confidential treatment is permitted pursuant to the call report instructions; or

(2) copies of only the following schedules from their call reports for the most recent year-end and the prior year-end, excluding any information for which confidential treatment is permitted pursuant to the call report instructions:

(i) Schedule RC (Balance Sheet);

(ii) Schedule RC-N (Past-Due and Nonaccrual Loans and Leases);

(iii) Schedule RI (Income Statement);

(iv) Schedule RI-A (Changes in Equity Capital); and

(v) Schedule RI-B (Charge-Offs and Recoveries and Changes in Allowance for Loan and Lease Losses)—Part I may be omitted; or

(3) in the case of a bank required to file statements and reports pursuant to the Board's Regulation H, a copy of the bank's

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annual report to shareholders for meetings at which directors are to be elected or the bank's annual report; or

(4) in the case of a bank with independently audited financial statements, copies of the audited financial statements and the certificate or report of the independent accountant if such statements contain information for the two most recent year-ends comparable to that specified in subsection (d)(2); or

(5) in the case of a bank that is the only bank subsidiary of a bank holding company, that is majority-owned by that bank holding company, and that has assets equal to 95 percent or more of the bank holding company's consolidated total assets, a copy of either (i) the annual report of the bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission; or (ii) if the holding company has consolidated assets of $150 million or more, the sections in the bank holding company's consolidated financial statements for the most recent year-end and the prior year-end on Form FY-Y-9C (Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 Million or More, or with More Than One Subsidiary Bank (OMB No. 7100-0128)) prepared pursuant to the Board's Regulation Y, and comparable to the call report schedules enumerated in paragraph (d)(2) of this section.

(e) *Financial information to be provided by other covered institutions.* Other covered institutions shall fulfill the requirements of this section by providing, upon request, at least one free copy to each requestor of the following schedules from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (OMB No. 7100-0032) for the most recent year-end and the prior year-end:

(1) Schedule RAL (Assets and Liabilities);

(2) Schedule E (Deposit Liabilities and Credit Balances);

(3) Schedule P (Other Borrowed Money).

The institution shall make the information available as soon as is reasonably possible but not later than April 1 of the year immediately following the end of the year to which the most recently available information pertains.

(f) *Disclaimer.* The following legend shall be included with any financial information provided pursuant to this section: "This financial information has not been reviewed, or confirmed for accuracy or relevance, by the Federal Reserve System."

(g) This section is not intended to create a private right of action against any institution disclosing documents pursuant to this section.

APPENDIX A TO SECTION 208.8—Sample Notices

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

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

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be available for damages incurred in excess of your flood insurance.

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

APPENDIX A—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

See the Board pamphlet "Capital Adequacy Guidelines."

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Board of Governors of the Federal Reserve System

AT-10299A

Regulation Y
Bank Holding Companies and Change in Bank Control

12 CFR 225; as revised effective March 15, 1989

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

March 1989

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Regulation Y
Bank Holding Companies and Change in Bank Control

12 CFR 225; as amended effective March 15, 1989

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SUBPART A—GENERAL PROVISIONS

SECTION 225.1—Authority, Purpose, and Scope

(a) *Authority.* This part* (Regulation Y) is issued by the Board of Governors of the Federal Reserve System ("Board") under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 USC 1844(b)) ("BHC Act"); sections 8 and 13(a) of the International Banking Act of 1978 (12 USC 3106 and 3108); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 USC 1817(j)(13)) ("Bank Control Act"); section 8(b) of the Federal Deposit Insurance Act (12 USC 1818(b)); and the International

* Code of Federal Regulations, title 12, chapter II, part 225.

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Lending Supervision Act of 1983 (Pub. L. 98-181, title IX). The BHC Act is codified at 12 USC 1841, et seq.

(b) *Purpose.* The principal purposes of this part are to regulate the acquisition of control of banks by companies and individuals, to define and regulate the nonbanking activities in which bank holding companies and foreign banking organizations with United States operations may engage, and to set forth the procedures for securing approval for such transactions and activities.

(c) *Scope.* (1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B governs acquisitions of bank or bank holding company securities and assets by bank holding companies or by any company that will become a bank holding company as a result of the acquisition.

(3) Subpart C defines and regulates the nonbanking activities in which bank holding companies and foreign banking organizations may engage directly or through a subsidiary. In addition, certain nonbanking activities conducted by foreign banking organizations and certain foreign activities conducted by bank holding companies are governed by the Board's Regulation K (12 CFR 211, International Banking Operations).

(4) Subpart D specifies situations in which a company is presumed to control voting securities or to have the power to exercise a controlling influence over the management or policies of a bank or other company, sets forth the procedures for making a control determination, and provides rules governing the effectiveness of divestitures by bank holding companies.

(5) Subpart E governs changes in bank control resulting from the acquisition by individuals or companies (other than bank holding companies) of voting securities of a bank holding company or state member bank of the Federal Reserve System.

(6) Appendix A to the regulation contains the Board's capital adequacy guidelines for bank holding companies and for state member banks.

(7) Appendix B to the regulation contains the Board's policy statement for formation of small one-bank holding companies.

SECTION 225.2—Definitions

Except as modified in this section or unless the context otherwise requires, the terms used in this regulation have the same meanings as set forth in the relevant statutes.

(a) "Affiliate" means any company that controls, is controlled by, or is under common control with, a bank or nonbank bank.

(b)(1) "Bank" means—

(i) an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 USC 1813(h)); or

(ii) an institution organized under the laws of the United States which both—

(A) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(B) is engaged in the business of making commercial loans.

(2) "Bank" does not include those institutions qualifying under the exceptions listed in section 2(c)(2) of the BHC Act (12 USC 1841(c)(2)).

(c)(1) "Bank holding company" means any company (including a bank) that has direct or indirect control of a bank, other than control that results from the ownership or control of—

(i) voting securities held in good faith in a fiduciary capacity (other than as provided in paragraphs (d)(2)(ii) and (iii) of this section) without sole discretionary voting authority, or as otherwise exempted under section 2(a)(5)(A) of the BHC Act;

(ii) voting securities acquired and held only for a reasonable period of time in connection with the underwriting of securities, as provided in section 2(a)(5)(B) of the BHC Act;

(iii) voting rights to voting securities acquired for the sole purpose and in the course of participating in a proxy solici-

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tation, as provided in section 2(a)(5)(C) of the BHC Act;

(iv) voting securities acquired in satisfaction of debts previously contracted in good faith, as provided in section 2(a)(5)(D) of the BHC Act, if the securities are divested within two years of acquisition (or such later period as the Board may permit by order); or

(v) voting securities of certain institutions owned by a thrift institution or a trust company, as provided in sections 2(a)(5)(E) and (F) of the BHC Act.

(2) Except for the purposes of section 225.4(b) of this subpart and subpart E of this regulation or as otherwise provided in this regulation, the term "bank holding company" includes a foreign banking organization. For the purposes of subpart B, the term "bank holding company" includes a foreign banking organization only if it owns or controls a bank in the United States.

(d)(1) "Company" includes any bank, corporation, general or limited partnership, association or similar organization, business trust, or any other trust unless by its terms it must terminate either within 25 years, or within 21 years and 10 months after the death of individuals living on the effective date of the trust.

(2) "Company" does not include any organization, the majority of the voting securities of which are owned by the United States or any state.

(e)(1) "Control" of a bank or other company means (except for the purposes of subpart E):

(i) ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or other company, directly or indirectly or acting through one or more other persons;

(ii) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the bank or other company;

(iii) the power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or other company, as determined by the Board after notice and opportunity for hearing in accordance with section 225.31 of subpart D of this regulation; or

(iv) conditioning in any manner the transfer of 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company upon the transfer of 25 percent or more of the outstanding shares of any class of voting securities of another bank or other company.

(2) A bank or other company is deemed to control voting securities or assets owned, controlled, or held, directly or indirectly—

(i) by any subsidiary of the bank or other company;

(ii) in a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the bank or other company or of any of its subsidiaries; or

(iii) in a fiduciary capacity for the benefit of the bank or other company or any of its subsidiaries.

(f) "Foreign banking organization" and "qualifying foreign banking organization" shall have the same meanings as provided in section 211.23 of the Board's Regulation K (12 CFR 211.23).

(g) "Management official" means any officer, director (including honorary or advisory directors), partner, or trustee of a bank or other company, or any employee of the bank or other company with policy-making functions.

(h) "Nonbank bank" means any institution that—

(1) became a bank as a result of enactment of the Competitive Equality Amendments of 1987 (Pub. L. No. 100-86), on the date of such enactment (August 10, 1987); and

(2) was not controlled by a bank holding company on the day before the enactment of the Competitive Equality Amendments of 1987 (August 9, 1987).

(i) "Outstanding shares" means any voting securities, but does not include securities owned by the United States or by a company wholly owned by the United States.

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(j) "Person" includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(k) "Principal shareholder" means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(*l*) "Subsidiary" means a bank or other company that is controlled by another company, and refers to a direct or indirect subsidiary of a bank holding company. An indirect subsidiary is a bank or other company that is controlled by a subsidiary of the bank holding company.

(m) "United States" means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(n)(1) "Voting securities" means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder—

(i) to vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) to vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) Preferred shares, limited partnership shares or interests, or similar interests are not "voting securities" if—

(i) any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) the shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) the shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

SECTION 225.3—Administration

(a) *Delegation of authority.* Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation and in the Board's Rules Regarding Delegation of Authority (12 CFR 265) and the Board's Rules of Procedure (12 CFR 262).

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, the appropriate Federal Reserve Bank is as follows:

(1) For a bank holding company (or a company applying to become a bank holding company): the Reserve Bank of the Federal Reserve District in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary banks on the date it became (or will become) a bank holding company;

(2) For a foreign banking organization that has no subsidiary bank and is not subject to paragraph (b)(1) of this section: the Reserve Bank of the Federal Reserve District in which the total assets of the organization's United States branches, agencies, and commercial lending companies are the largest as of the later of January 1, 1980, or the date it becomes a foreign banking organization;

(3) For an individual or company submitting a notice under subpart E of this regulation: the Reserve Bank of the Federal Reserve District in which the banking operations of the bank holding company or state member bank to be acquired are principally

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conducted, as measured by total domestic deposits on the date the notice is filed.

SECTION 225.4—Corporate Practices

(a) *Bank holding company policy and operations.* (1) A bank holding company shall serve as a source of financial and managerial strength to its subsidiary banks and shall not conduct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a bank holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a bank) constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary bank of the bank holding company and is inconsistent with sound banking principles or the purposes of the BHC Act or the Financial Institutions Supervisory Act of 1966, as amended (12 USC 1818(b) et seq.), the Board may require the bank holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 5(e) of the BHC Act.

(b) *Purchase or redemption by a bank holding company of its own securities.*

(1) *Filing notice.* A bank holding company shall give the Board prior written notice before purchasing or redeeming its equity securities, if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period other than as part of a new issue.

(2) *Content of notice.* Any notice under this section shall be filed with the appropriate Reserve Bank and shall contain the following information:

(i) the purpose of the transaction, a description of the securities to be purchased or redeemed, the total number of each class outstanding, the gross consideration to be paid, and the terms of any debt incurred in connection with the transaction;

(ii) a description of all equity securities redeemed within the preceding 12 months, the net consideration paid, and the terms of any debt incurred in connection with those transactions; and

(iii) a current and pro forma consolidated balance sheet if the bank holding company has total assets of over $150 million, or a current and pro forma parent-company-only balance sheet if the bank holding company has total assets of $150 million or less.

(3) *Acting on notice.* Within 30 calendar days of receipt of a notice under this section, the appropriate Reserve Bank shall either approve the transaction proposed in the notice or refer the notice to the Board for decision. If the notice is referred to the Board for decision, the Board shall act on the notice within 60 calendar days after the Reserve Bank receives the notice.

(4) *Factors considered in acting on notice.* The Board may disapprove a proposed purchase or redemption if it finds that the proposal would constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board. In determining whether a proposal constitutes an unsafe or unsound practice, the Board will consider whether the bank holding company's financial condition, after giving effect to the proposed purchase or redemption, meets the financial standards applied by the Board under section 3 of the BHC Act, including the Board's capital adequacy guidelines (appendix A) and the Board's policy statement for formation of small one-bank holding companies (appendix B).

(5) *Disapproval and hearing.* The Board shall notify the bank holding company in writing of the reasons for a decision to disapprove any proposed purchase or redemption. Within 10 calendar days of receipt of a notice of disapproval by the Board, the bank holding company may submit a writ-

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ten request for a hearing. The Board will order a hearing within 10 calendar days of receipt of that request if it finds that material facts are in dispute or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR 263). At the conclusion of the hearing, the Board shall by order approve or disapprove the proposed purchase or redemption on the basis of the record of the hearing.

(c) *Deposit insurance.* Every bank that is a bank holding company or a subsidiary of a bank holding company shall obtain Federal Deposit Insurance and shall remain an "insured bank" as defined in section 3(h) of the Federal Deposit Insurance Act (12 USC 1813(h)).

(d) *Tie-in arrangements.* A bank holding company and any nonbanking subsidiary conducting an activity authorized under section 225.23 of this regulation may not in any manner extend credit, lease or sell property of any kind, provide any service, or fix or vary the consideration for any of these transactions subject to any condition or requirement that, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970 (12 USC 1971, 1972(1)).

(e) *Acting as transfer agent, municipal securities dealer, or clearing agent.* A bank holding company or any nonbanking subsidiary that is a "bank," as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 USC 78c(a)(6)), and that is a transfer agent of securities, a municipal securities dealer, a clearing agency, or a participant in a clearing agency (as those terms are defined in section 3(a) of the Securities Exchange Act (12 USC 78c(a)), shall be subject to sections 208.8(f)–(j) of the Board's Regulation H (12 CFR 208.8(f)–(j)) as if it were a state member bank.

SECTION 225.5—Registration, Reports, and Inspections

(a) *Registration of bank holding companies.* Each company shall register within 180 days after becoming a bank holding company by furnishing information in the manner and form prescribed by the Board. A company that receives the Board's prior approval under subpart B of this regulation to become a bank holding company may complete this registration requirement through submission of its first annual report to the Board as required by paragraph (b) of this section.

(b) *Reports of bank holding companies.* Each bank holding company shall furnish, in the manner and form prescribed by the Board, an annual report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year during which it remains a bank holding company. Additional information and reports shall be furnished as the Board may require.

(c) *Examinations and inspections.* The Board may examine or inspect any bank holding company and each of its subsidiaries and prepare a report of their operations and activities. With respect to a foreign banking organization, the Board may also examine any branch or agency of a foreign bank in any state of the United States and may examine or inspect each of the organization's subsidiaries in the United States and prepare reports of their operations and activities. The Board will rely as far as possible on the reports of examination made by the primary federal or state supervisor of the subsidiary bank of a bank holding company or of the branch or agency of the foreign bank.

SECTION 225.6—Penalties for Violations

(a) *Criminal and civil penalties.* Section 8 of the BHC Act provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual of the BHC Act or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a bank holding company. Civil money penalty assessments for violations of the BHC Act shall be made in accordance with subpart B of the Board's Rules of Practice for Hearings (12 CFR 263, subpart B). For any willful violation of the

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Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 USC 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 USC 1818(b) et seq.).

SUBPART B—ACQUISITION OF BANK SECURITIES OR ASSETS

SECTION 225.11—Transactions Requiring Board Approval

The following transactions require an application for the Board's prior approval under section 3 of the BHC Act unless otherwise exempted under section 225.12 of this subpart:

(a) *Formation of bank holding company.* Any action that causes a bank or other company to become a bank holding company.

(b) *Acquisition of subsidiary bank.* Any action that causes a bank to become a subsidiary of a bank holding company.

(c) *Acquisition of control of bank or bank holding company securities.* The acquisition by a bank holding company of direct or indirect ownership or control of any voting securities of a bank or bank holding company, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the bank or bank holding company. An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the bank holding company's proportional share of any class of voting securities.

(d) *Acquisition of bank assets.* The acquisition by a bank holding company or by a subsidiary thereof (other than a bank) of all or substantially all of the assets of a bank.

(e) *Merger of bank holding companies.* The merger or consolidation of bank holding companies, including a merger through the purchase of assets and assumption of liabilities.

SECTION 225.12 —Transactions Not Requiring Board Approval

The following transactions do not require the Board's approval under section 225.11 of this subpart:

(a) *Acquisition of securities in fiduciary capacity.* The acquisition by a bank or other company (other than a trust that is a company) of control of voting securities of a bank or bank holding company in good faith in a fiduciary capacity, unless—

(1) the acquiring bank or other company has sole discretionary authority to vote the securities and retains the authority for more than two years; or

(2) the acquisition is for the benefit of the acquiring bank or other company, or its shareholders, employees, or subsidiaries.

(b) *Acquisition of securities in satisfaction of debts previously contracted.* The acquisition by a bank or other company of control of voting securities of a bank or bank holding company in the regular course of securing or collecting a debt previously contracted in good faith, if the acquiring bank or other company divests the securities within two years of acquisition. The Board or Reserve Bank may grant requests for up to three one-year extensions.

(c) *Acquisition of securities by a bank holding company with majority control.* The acquisition by a bank holding company of additional voting securities of a bank or bank holding company if more than 50 percent of the outstanding voting securities of the bank or bank holding company is lawfully controlled by the acquiring bank holding company prior to the acquisition.

(d) *Transactions subject to Bank Merger Act.* The merger or consolidation of a subsidiary bank of a bank holding company with another bank, or the purchase of assets by such a subsidiary bank, or a similar transaction involving subsidiary banks of a bank holding com-

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pany, if the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 USC 1828(c)). This exception does not include (1) the merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank; and (2) any transaction requiring the Board's prior approval under section 225.11(e) of this subpart. The Board may require an application under this subpart if it determines that the merger or consolidation would have a significant adverse impact on the financial condition of the bank holding company or otherwise requires approval under section 3 of the BHC Act.

(e) *Holding securities in escrow.* The holding of any voting securities of a bank or bank holding company in an escrow arrangement for the benefit of an applicant pending the Board's action on an application for approval of the proposed acquisition, if title to the securities and the voting rights remain with the seller and payment for the securities has not been made to the seller.

SECTION 225.13—Factors Considered in Acting on Bank Applications

(a) *Prohibited anticompetitive transactions.* As specified in sections 3(c)(1) and (2) of the BHC Act, the Board may not approve any application under this subpart if—

(1) the transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in any part of the United States; or

(2) the effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anticompetitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community.

(b) *Other factors.* In deciding applications under this subpart, the Board also considers the following factors with respect to the applicant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank or banks to be acquired:

(1) *Financial condition.* Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.

(2) *Management.* The competence and character of the principals of the applicant and banks or bank holding companies concerned; their record of compliance with laws and regulations; and applicant's record of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) *Convenience and needs of the community.* The convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 (12 USC 2901 et seq.) and regulations issued thereunder, including the Board's Regulation BB (12 CFR 228.)

(c)(1) *Interstate transactions.* The Board may not approve any application under this subpart that would permit—

(i) the formation of a bank holding company that controls more than 5 percent of the outstanding shares of any class of voting securities of two or more banks located in different states; or

(ii) the acquisition by a bank holding company or by any of its subsidiaries of any voting securities of, any interest in, or substantially all of the assets of, an additional bank located in a state other than the state in which the operations of the banking subsidiaries of the bank holding company were principally conducted (as measured by total deposits) on July 1, 1966, or on the date on which the company became a bank holding company, whichever date is later.

(2) *Exceptions.* The prohibitions of this paragraph do not apply if—

(i) the bank is located in a state that by statute expressly authorizes the acquisition of securities of, an interest in, or

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substantially all of the assets of, a bank within the state by an out-of-state bank holding company; or
(ii) the acquisition involves a closed or failing bank with assets of at least $500,000,000, and has been authorized under section 13(f) of the Federal Deposit Insurance Act (12 USC 1823(f)).

SECTION 225.14—Procedures for Applications, Notices, and Hearings

(a) *Filing application.* An application for the Board's prior approval under this subpart shall be filed with the appropriate Reserve Bank on the designated form and shall comply with section 262.3 of the Rules of Procedure (12 CFR 262.3), which requires the applicant to publish newspaper notice of the application.

(b) *Notice.*
(1) *Notice to primary banking supervisor.* Upon receipt of an application under this subpart, the Reserve Bank shall promptly furnish notice and a copy of the application to the primary banking supervisor of the bank to be acquired. The primary supervisor shall have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.
(2) *Federal Register notice.* Upon receipt by the Reserve Bank of an application under this section, notice of the application shall be promptly sent to the *Federal Register* for publication. The *Federal Register* notice shall invite comment on the application for a period of no more than 30 days.

(c) *Accepting application for processing.* Within 10 business days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing, request additional information to complete the application, or return the application if it is substantially incomplete. If additional information is requested, the Reserve Bank shall, within 5 business days of receipt of the requested information, either accept the application for processing or return it to the applicant if it is still incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board.

(d) *Action on applications.*
(1) *Action under delegated authority.* The Reserve Bank shall approve an application under this section within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate. Upon written notice to the applicant, the Reserve Bank may extend the 30-day period for 15 days. If the extension of time is to request necessary additional information, the 15-day period does not commence until after the Reserve Bank receives the requested information.
(2) *Board action.* The Board shall act on an application under this subpart that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and states the reasons for the extension. In no event may the extension exceed the 91-day period provided in paragraph (g) of this section. The Board may request additional information that it believes is necessary for its decision.

(e) *Notice to attorney general.* The Board or Reserve Bank shall immediately notify the attorney general of approval of any application under this section.

(f) *Hearings.* As provided in section 3(b) of the BHC Act, the Board shall order a hearing if it receives from the primary supervisor of the bank to be acquired, within the 30-day period specified in paragraph (b)(1) of this section, a written recommendation of disapproval of an application. The Board may order a formal or informal hearing or other proceeding on the application, as provided in section 262.3(i)(2) of the Board's Rules of Procedure. Any request for a hearing (other than from the primary supervisor) shall comply with section 262.3(e) of the Rules of Procedure (12 CFR 262.3(e)).

(g) *Approval through failure to act.*
(1) *Ninety-one day rule.* An application

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under this subpart shall be deemed approved if the Board fails to act on the application within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, the Board acts when it issues an order stating that the Board has approved or denied the application, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(2) *Complete record.* For the purpose of computing the commencement of the 91-day period, the record is complete on the latest of—

(i) the date of receipt by the Board of an application that has been accepted by the Reserve Bank;

(ii) the last day provided in any notice for receipt of comments and hearing requests on the application;

(iii) the date of receipt by the Board of the last relevant material regarding the application that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System; or

(iv) the date of completion of any hearing or other proceeding.

(h) *Exceptions to notice and hearing requirements.*

(1) *Probable bank failure.* If the Board finds it must act immediately on an application in order to prevent the probable failure of a bank or bank holding company, the Board may modify or dispense with the notice and hearing requirements provided in this section.

(2) *Emergency.* If the Board finds that, although immediate action on an application is not necessary, an emergency exists requiring expeditious action, the Board shall provide the primary supervisor 10 days to submit its recommendation. The Board may act on such an application without a hearing and may modify or dispense with the other notice and hearing requirements provided in this section.

(i) *Waiting period.* A transaction approved under this subpart shall not be consummated until 30 days after the date of approval of the application, unless the Board has determined under paragraph (h) of this section that—

(1) the application involves a probable bank failure, in which case the transaction may be consummated immediately upon approval; or

(2) an emergency exists requiring expeditious action, in which case the transaction may be consummated on or after the fifth calendar day following approval.

SUBPART C—NONBANKING ACTIVITIES AND ACQUISITIONS BY BANK HOLDING COMPANIES

SECTION 225.21—Prohibited Nonbanking Activities and Acquisitions; Exempt Bank Holding Companies

(a) *Prohibited nonbanking activities and acquisitions.* Except as provided in section 225.22 of this subpart, a bank holding company or a subsidiary may not engage in, or acquire or control, directly or indirectly, voting securities or assets of a company engaged in, any activity other than—

(1) banking or managing or controlling banks and other subsidiaries authorized under the BHC Act; and

(2) an activity that the Board determines to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, including any incidental activities that are necessary to carry on such an activity, if the bank holding company has obtained the prior approval of the Board for that activity in accordance with and subject to the requirements of this regulation.

(b) *Exempt bank holding companies.* The following bank holding companies are exempt from the provisions of this subpart:

(1) *Family-owned companies.* Any company that is a "company covered in 1970," as defined in section 2(b) of the BHC Act, more than 85 percent of the voting securities of which was collectively owned on June 30, 1968, and continuously thereafter, by members of the same family (or their

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spouses) who are lineal descendants of common ancestors.

(2) *Labor, agricultural, and horticultural organizations.* Any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code (26 USC 501(c)).

(3) *Companies granted hardship exemption.* Any bank holding company that has controlled only one bank since before July 1, 1968, and that has been granted an exemption by the Board under section 4(d) of the BHC Act, subject to any conditions imposed by the Board.

(4) *Companies granted exemption on other grounds.* Any company that acquired control of a bank before December 10, 1982, without the Board's prior approval under section 3 of the BHC Act, on the basis of a narrow interpretation of the term "demand deposit" or "commercial loan" if the Board has determined that (i) coverage of the company as a bank holding company under this subpart would be unfair or represent an unreasonable hardship; and (ii) exclusion of the company from coverage under this regulation is consistent with the purposes of the BHC Act and section 106 of the Bank Holding Company Act Amendments of 1970 (12 USC 1971, 1972(1)). The provisions of section 225.4 of subpart A of this regulation are not applicable to a company exempt under this paragraph.

SECTION 225.22—Exempt Nonbanking Activities and Acquisitions

(a) *Servicing activities.* A bank holding company may, without the Board's prior approval under this subpart, furnish services to or perform services for, or establish or acquire a company that engages solely in furnishing services to or performing services for—

(1) the bank holding company or its subsidiaries in connection with their activities as authorized by law, including services that are necessary to fulfill commitments entered into by the subsidiaries with third parties, if the bank holding company or servicing company complies with the Board's published interpretations and does not act as principal in dealing with third parties; and

(2) the internal operations of the bank holding company or its subsidiaries. Services for the internal operations of the bank holding company or its subsidiaries include, but are not limited to—

(i) accounting, auditing, and appraising;

(ii) advertising and public relations;

(iii) data processing and data transmission services, data bases or facilities;

(iv) personnel services;

(v) courier services;

(vi) holding or operating property used wholly or substantially by a subsidiary in its operations or for its future use;

(vii) liquidating property acquired from a subsidiary;

(viii) liquidating property acquired from any sources either prior to May 9, 1956, or the date on which the company became a bank holding company, whichever is later; and

(ix) selling, purchasing, or underwriting insurance such as blanket bond insurance, group insurance for employees, and property and casualty insurance.

(b) *Safe deposit business.* A bank holding company or nonbank subsidiary may, without the Board's prior approval, conduct a safe deposit business, or acquire voting securities of a company that conducts such a business.

(c) *Nonbanking acquisitions not requiring prior Board approval.* The Board's prior approval is not required under this subpart for the following acquisitions:

(1) *DPC acquisitions.* (i) Voting securities or assets, acquired by foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted ("DPC property") in good faith, if the DPC property is divested within two years of acquisition.

(ii) The Board may, upon request, extend this two-year period for up to three additional one-year periods. The Board may permit additional extensions for up to 5 years (for a total of 10 years), for real estate or other assets that are demon-

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strated by the bank holding company to have value and marketability characteristics similar to real estate.

(iii) Transfers of DPC property within the bank holding company system do not extend any period for divestiture of the property.

(2) *Securities or assets required to be divested by subsidiary.* Voting securities or assets required to be divested by a subsidiary at the request of an examining federal or state authority (except by the Board under the BHC Act or this regulation), if the bank holding company divests the securities or assets within two years from the date acquired from the subsidiary.

(3) *Fiduciary investments.* Voting securities or assets acquired by a bank or other company (other than a trust that is a company) in good faith in a fiduciary capacity, if the voting securities or assets are—

(i) held in the ordinary course of business; and

(ii) not acquired for the benefit of the company or its shareholders, employees, or subsidiaries.

(4) *Securities eligible for investment by a national bank.* Voting securities of the kinds and amounts explicitly eligible by federal statute (other than section 4 of the Bank Service Corporation Act, 12 USC 1864) for invesment by a national bank, and voting securities acquired prior to June 30, 1971, in reliance on section 4(c)(5) of the BHC Act and interpretations of the Comptroller of the Currency under section 5136 of the Revised Statutes (12 USC 24(7)).

(5) *Securities or property representing 5 percent or less of a company.* Voting securities of a company or property that, in the aggregate, represent 5 percent or less of the outstanding shares of any class of voting securities of a company or a 5 percent interest or less in the property, subject to the provisions of 12 CFR 225.137.

(6) *Securities of investment company.* Voting securities of an investment company that is solely engaged in investing in securities and that does not own or control more than 5 percent of the outstanding shares of any class of voting securities of any company.

(7) *Assets acquired in the ordinary course of business.* Assets of a company acquired in the ordinary course of business, subject to the provisions of 12 CFR 225.132, if the assets relate to activities in which the acquiring company has previously received Board approval under this regulation to engage in the geographic areas to be served.

(8) *Asset acquisitions by consumer finance or mortgage company or industrial bank.* Assets of an office(s) of a company, all or substantially all of which relate to making, acquiring, or servicing loans for personal, family, or household purposes, if—

(i) the acquiring company has previously received Board approval under this regulation to engage in consumer finance, residential mortgage banking, or industrial banking activities in the geographic areas to be served by the acquired office(s);

(ii) the assets acquired during any 12-month period do not represent more than 25 percent of the assets (on a consolidated basis) of the acquiring consumer finance company, mortgage company or industrial bank, or more than $25 million, whichever amount is less;

(iii) the assets acquired do not represent more than 50 percent of the selling company's consolidated assets that are devoted to the consumer finance, residential mortgage banking, or industrial banking business;

(iv) the acquiring company notifies the Reserve Bank of the acquisition within 30 days after the acquisition; and

(v) the acquiring company, after giving effect to the transaction, meets the Board's capital adequacy guidelines (appendix A) and the Board has not previously notified the acquiring company that it may not acquire assets under the exemption in this paragraph.

(d) *Acquisition of securities by subsidiary banks.*

(1) *National bank.* A national bank or its subsidiary may, without the Board's approval under this subpart, acquire or retain

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securities on the basis of section 4(c)(5) of the BHC Act in accordance with the regulations of the Comptroller of the Currency.

(2) *State bank.* A state-chartered bank or its subsidiary may, insofar as federal law is concerned and without the Board's prior approval under this subpart—

(i) acquire or retain securities, on the basis of section 4(c)(5) of the BHC Act, of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; or

(ii) acquire or retain all (but, except for directors' qualifying shares, not less than all) of the securities of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(e) *Activities and securities of new bank holding companies.* A company that becomes a bank holding company may, for a period of two years, engage in nonbanking activities and control voting securities or assets of a nonbank subsidiary, if the bank holding company engaged in such activities or controlled such voting securities or assets on the date it became a bank holding company. The Board may grant requests for up to three one-year extensions of the two-year period.

(f) *Grandfathered activities and securities.* Unless the Board orders divestiture or termination under section 4(a)(2) of the BHC Act, a "company covered in 1970," as defined in section 2(b) of the BHC Act, may—

(1) retain voting securities or assets and engage in activities that it has lawfully held or engaged in continuously since June 30, 1968; and

(2) acquire voting securities of any newly formed company to engage in such activities.

(g) *Securities or activities exempt under Regulation K.* A bank holding company may acquire voting securities or assets and engage in activities as authorized in Regulation K (12 CFR 211).

SECTION 225.23—Procedures for Applications, Notices, and Hearings

(a) *Application or notice required for nonbanking activities.* An application or notice for the Board's prior approval under section 225.21(a) of this subpart for the following transactions shall be filed by a bank holding company with the appropriate Reserve Bank on the designated form in accordance with the Board's Rules of Procedure (12 CFR 262.2):

(1) *Engaging de novo in listed nonbanking activities.* A notice is required to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity listed in section 225.25 of this subpart. The applicant may commence the activity 30 days after receipt by the Reserve Bank of the notice unless the Reserve Bank within the 30-day period—

(i) returns the notice because it is incomplete or requires an application under paragraph (a)(2) or (3) of this section;

(ii) notifies the company that it may consummate the transaction at an earlier date;

(iii) extends the 30-day period for an additional 15 days; or

(iv) refers the notice to the Board for decision because substantive adverse comment is received or it otherwise appears appropriate.

If the 30-day period is extended by the Reserve Bank to request necessary additional information, the 15-day period does not commence until after the Reserve Bank receives the requested information. The Reserve Bank shall promptly send a copy of any notice received under this paragraph to the Board.

(2) *Acquiring a company engaged in listed nonbanking activities.* An application is required to acquire or control voting securities or assets of a company engaged in a permissible nonbanking activity listed in section 225.25 of this subpart.

(3) *Engaging in or acquiring a company to engage in unlisted nonbanking activities.* An application is required to commence or to engage de novo, or to acquire or control voting securities or assets of a company en-

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gaged in, any activity not listed in section 225.25 of this subpart. The application shall contain evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(b) *Notice to expand or alter nonbanking activities.*

(1) *De novo expansion.* A notice under paragraph (a)(1) of this section is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activity that the Board has previously approved for the bank holding company under this regulation, only if—

(i) the Board's prior approval was limited geographically;

(ii) the activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) the Board or appropriate Reserve Bank has notified the company that a notice under paragraph (a)(1) of this section is required.

The Board may require an application under paragraph (a)(2) or (a)(3) of this section instead of a notice.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR Part 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* A notice under paragraph (a)(1) of this section is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity. The Board may require an application under paragraph (a)(2) or (3) of this section instead of a notice.

(c) *Accepting application for processing.* Within 10 business days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing, request additional information to complete the application, or return the application to the applicant if it is substantially incomplete. If additional information is requested, the Reserve Bank shall, within five business days of receipt of the requested information, either accept the application for processing or return the application to the applicant if it is still incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board.

(d) *Federal Register notice.*

(1) *Listed activities.* Upon receipt by the Reserve Bank of an application or notice involving an activity listed in section 225.25 of this subpart, notice of the application or proposal shall be promptly sent to the *Federal Register* for publication. The *Federal Register* notice shall invite comment for a period of not more than 30 days.

(2) *Unlisted activities.* In the case of an application under this section involving an activity not listed in section 225.25 of this subpart, the Board shall, within 10 business days of acceptance by the Reserve Bank, send notice of the application to the *Federal Register* for publication, unless the Board determines that the applicant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the applicant. In the event notice of an application is not published for comment, the Board shall inform the applicant of the reasons for the decision. The *Federal Register* notice shall invite comment on the proposal for a reasonable period of time, generally for 30 days.

(e) *Action on applications.*

(1) *Action under delegated authority.* The Reserve Bank shall approve an application under paragraph (a)(2) of this section

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within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate. Upon written notice to the applicant, the Reserve Bank may extend the 30-day period for 15 days. If the extension of time is to request necessary additional information, the 15-day period does not commence until the Reserve Bank receives the requested information.

(2) *Board action.* The Board shall act on an application or notice under this section that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application or received the notice, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and explains the reasons for the extension. In no event may the extension exceed the 91-day period specified in paragraph (h) of this section. The Board may request additional information that it believes is necessary for its decision.

(f) *Expedited procedure for small acquisitions.*

(1) *Filing notice.* As an alternative to the application procedure of paragraph (a)(2) of this section, a bank holding company may apply to acquire voting securities or assets of a company engaged in an activity listed in section 225.25 of this subpart by (i) providing the appropriate Reserve Bank with a description of the transaction; and either (ii) submitting a copy of a newspaper notice in the form prescribed by the Board; or (iii) requesting the Board to publish notice of the application in the *Federal Register.* The newspaper notice shall be published in a newspaper of general circulation in the areas to be served as a result of the acquisition and shall provide an opportunity for interested persons to comment on the application for a period of at least 10 calendar days. If the applicant elects *Federal Register* notice, the notice shall provide an opportunity for interested persons to comment for a period of at least 15 calendar days.

(2) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if—

(i) neither the book value of the assets to be acquired nor the gross consideration to be paid for the securities or assets exceeds $15 million;

(ii) the bank holding company has previously received Board approval to engage in the activity involved in the acquisition; and

(iii) the bank holding company meets the Board's capital adequacy guidelines (appendix A).

(3) *Action on application.* Within 5 business days after the close of the comment period specified in the *Federal Register* notice or within 15 calendar days after receipt by the Reserve Bank of the newspaper notice, the Reserve Bank shall either approve the application or refer it to the Board for decision if action under delegated authority is not appropriate. The Board shall act on an application under this paragraph that is referred to it for decision in accordance with paragraph (e)(2) of this section. The Reserve Bank, upon written notice to the applicant, may extend the time period for approval under this paragraph for a reasonable period of time not to exceed 30 days. The Reserve Bank or the Board may require an application under paragraph (a)(2) of this section.

(g) *Hearing.* Any request for a hearing on an application or notice under this section shall comply with the provisions of section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)). The Board may order a formal or informal hearing or other proceeding on an application, as provided in section 262.3(i)(2) of the Rules of Procedure (12 CFR 262.3(i)(2)). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(h) *Approval through failure to act; 91-day rule.* An application or notice under this subpart shall be deemed approved if the Board fails to act on the application or notice within 91 calendar days after the date of submission to the Board of the complete record on the application or notice. The procedures for

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computation of the 91-day rule as set forth in section 225.14(g) of subpart B of this regulation apply to applications and notices under this subpart.

(i) *Emergency thrift institution acquisitions.* In the case of an application to acquire a thrift institution, the Board may modify or dispense with the notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary federal regulator of the institution concurs.

SECTION 225.24—Factors Considered in Acting on Nonbanking Applications

In evaluating an application or notice under section 225.23 of this subpart, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on those resources. Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity de novo is presumed to result in benefits to the public through increased competition.

SECTION 225.25—List of Permissible Nonbanking Activities

(a) *Closely related nonbanking activities.* The activities listed below are so closely related to banking or managing or controlling banks as to be a proper incident thereto and may be engaged in by a bank holding company or a subsidiary thereof in accordance with and subject to the requirements of this regulation.

(b) (1) *Making and servicing loans.* Making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made, for example, by the following types of companies:

(i) consumer finance;

(ii) credit card;

(iii) mortgage;

(iv) commercial finance; and

(v) factoring.

(2) *Industrial banking.* Operating an industrial bank, Morris Plan bank, or industrial loan company, as authorized under state law, so long as the institution is not a bank.

(3) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, so long as the institution is not a bank and does not make loans or investments or accept deposits other than—

(i) deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law;

(ii) deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property; or for such owner or investor as agent or custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing agent, or securities clearing agent; provided such deposits are not employed by or for the account of the customer in the manner of a general-purpose checking account or interest-bearing account; or

(iii) making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. (Such authorized loans and investments, however, may not be used as a method of channeling funds to nonbanking affiliates of the trust company.)

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(4) *Investment or financial advice.* Acting as investment or financial advisor to the extent of—

(i) serving as the advisory company for a mortgage or a real estate investment trust;

(ii) serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 USC 80a-2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(iii) providing portfolio investment advice[1] to any other person;

(iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies;[2] and

(v) providing financial advice to state and local governments, such as with respect to the issuance of their securities.

(5) *Leasing personal or real property.* Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(i) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(iii) the lease is on a nonoperating basis;[3]

(iv) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions[4]) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease,[5] from—

(A) rentals;

(B) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect);

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[1] The term "portfolio investment" is intended to refer generally to the investment of funds in a "security" as defined in section 2(1) of the Securities Act of 1933 (15 USC 77b) or in real property interests, except where the real property is to be used in the trade or business of the person being advised. In furnishing portfolio investment advice, bank holding companies and their subsidiaries shall observe the standards of care and conduct applicable to fiduciaries.

[2] This is to be contrasted with "management consulting," which the Board views as including, but not limited to, the provision of analysis or advice as to a firm's (A) purchasing operations, such as inventory control, sources of supply, and cost minimization subject to constraints; (B) production operations, such as quality control, work measurement, product methods, scheduling shifts, time and motion studies, and safety standards; (C) marketing operations, such as market testing, advertising programs, market development, packaging, and brand development; (D) planning operations, such as demand and cost projections, plant location, program planning, corporate acquisitions and mergers, and determination of long-term and short-term goals; (E) personnel operations, such as recruitment, training, incentive programs, employee compensation, and management-personnel relations; (F) internal operations, such as taxes, corporate organization, budgeting systems, budget control, data processing systems evaluation, and efficiency evaluation; or (G) research operations, such as product development, basic research, and product design and innovation. The Board has determined that "management consulting" is not an activity that is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

[3] For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly (A) provide for the servicing, repair, or maintenance of the leased vehicle during the lease term; (B) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (C) provide for the loan of an automobile during servicing of the leased vehicle; (D) purchase insurance for the lessee; or (E) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

[4] The Board understands that some federal, state, and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized to conduct leasing activities under this paragraph from entering into a lease with such governmental entities if the company reasonably anticipates that the governmental entities will renew the lease annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further, a company authorized to conduct personal property leasing activities under this paragraph may also engage in so-called "bridge" lease financing of personal property, but not real property, if the lease is short-term pending completion of long-term financing, by the same or another lender.

[5] The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee, if a factor in the financing, and prevailing rates in the money and capital markets.

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(C) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 percent of the acquisition cost of the property to the lessor; and

(D) in the case of a lease of personal property of not more than seven years in duration, such additional amount, which shall not exceed 60 percent of the acquisition cost of the property, as may be provided by an unconditional guarantee by a lessee, independent third party, or manufacturer, which has been determined by the lessor to have the financial resources to meet such obligation, that will assure the lessor of recovery of its investment and cost of financing;

(v) the maximum lease term during which the lessor must recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be 40 years; and

(vi) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease;[6] however, in no case shall the lessor retain any interest in the property beyond 50 years after its acquisition of the property.

(6) *Community development.* Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(7) *Data processing.* Providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, if—

(i) the data to be processed or furnished are financial, banking, or economic, and the services are provided pursuant to a written agreement so describing and limiting the services;

(ii) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and

(iii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(8) *Insurance agency and underwriting.*

(i) *Credit insurance.* Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is—

(A) directly related to an extension of credit by the bank holding company or any of its subsidiaries; and

(B) limited to ensuring the repayment of the outstanding balance due on the extension of credit[7] in the event of the death, disability, or involuntary unemployment of the debtor.

(ii) *Finance company subsidiary.* Acting as agent or broker for insurance directly related to an extension of credit by a finance company[8] that is a subsidiary of a bank holding company, if—

(A) the insurance is limited to ensuring repayment of the outstanding bal-

[6] In the event of a default on a lease agreement prior to the expiration of the lease term, the lessor shall either re-lease the property, subject to all the conditions of this paragraph, or liquidate the property as soon as practicable but in no event later than two years from the date of default on a lease agreement or such additional time as the Board may permit under section 225.22(c)(1) of this regulation, as if the property were DPC property.

[7] "Extension of credit" includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full-payout leases that meet the requirements of paragraph (b)(5) of this section.

[8] "Finance company" includes all non-deposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual states as finance companies and that engage in a significant degree of consumer lending.

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ance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(B) the extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of a residential manufactured home[9] and the credit is secured by the home; and

(C) the applicant commits to notify borrowers in writing that—

(*1*) they are not required to purchase such insurance from the applicant;

(*2*) such insurance does not insure any interest of the borrower in the collateral; and

(*3*) the applicant will accept more comprehensive property insurance in place of such single-interest insurance.

(iii) *Insurance in small towns.* Engaging in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that—

(A) has a population not exceeding 5,000 (as shown in the preceding decennial census); or

(B) has inadequate insurance agency facilities, as determined by the Board, after notice and opportunity for hearing.

(iv) *Insurance-agency activities conducted on May 1, 1982.* Engaging in any specific insurance-agency activity[10] if the bank holding company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.[11] A bank holding company or subsidiary engaging in a specific insurance-agency activity under this clause may—

(A) engage in such specific insurance-agency activity only at locations—

(*1*) in the state in which the bank holding company has its principal place of business (as defined in 12 USC 1842(d));

(*2*) in any state or states immediately adjacent to such state; and

(*3*) in any state in which the specific insurance-agency activity was conducted (or was approved to be conducted) by such bank holding company or subsidiary thereof or by any other subsidiary of such bank holding company on May 1, 1982; and

(B) provide other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982, by such bank holding company or subsidiary.

(v) *Supervision of retail insurance agents.* Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell—

(A) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or its subsidiaries; and

(B) group insurance that protects the employees of the bank holding company or its subsidiaries.

(vi) *Small bank holding companies.* Engaging in any insurance-agency activity if the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance-agency activities under this paragraph may not engage in the sale of

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[9] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

[10] Nothing contained in this provision shall preclude a bank holding company subsidiary that is authorized to engage in a specific insurance-agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes and prior notice has been provided to the Board.

[11] For the purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

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life insurance or annuities except as provided in paragraphs (i) and (iii) of this section, and it may not continue to engage in insurance-agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the holding company and its subsidiaries exceed $50 million.

(vii) *Insurance-agency activities conducted before 1971.* Engaging in any insurance-agency activity performed at any location in the United States directly or indirectly by a bank holding company that was engaged in insurance-agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

(9) Reserved.

(10) *Courier services.* Providing courier services for—

(i) checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(ii) audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[12]

(11) *Management consulting to depository institutions.* Providing management consulting advice[13] to nonaffiliated bank and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies, if—

(i) neither the bank holding company nor any of its subsidiaries own or control, directly or indirectly, any equity securities in the client institution;

(ii) no management official, as defined in 12 CFR 212.2(h), of the bank holding company or any of its subsidiaries serves as a management official of the client institution, except where such interlocking relationships are permitted pursuant to an exemption granted under 12 CFR 212.4(b);

(iii) the advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client institution at any depository institution subsidiary of the bank holding company; and

(iv) disclosure is made to each potential client institution of—

(A) the names of all depository institutions that are affiliates of the consulting company, and

(B) the names of all existing client institutions located in the same county(ies), metropolitan statistical area, or primary metropolitan statistical area as the client institution.[14]

(12) *Money orders, savings bonds, and traveler's checks.* The issuance and sale at retail of money orders and similar consumer-type payment instruments having a face value of not more than $1,000; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

(13) *Real estate and personal property appraising.* Performing appraisals of real estate and tangible and intangible personal property, including securities.

(14) *Arranging commercial real estate equity financing.* Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control and risk

[12] See also the Board's interpretation on courier activities (12 CFR 225.129, *Federal Reserve Regulatory Service* 4–180), which sets forth conditions for bank holding company entry into the activity.

[13] A bank holding company that has received the Board's prior approval to engage in offering management consulting advice to nonaffiliated commercial banks as of April 20, 1982, may offer such advice on a de novo basis to nonbank depository institutions pursuant to this paragraph without filing an application under section 225.23 of this subpart.

[14] In performing this activity, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.131, *Federal Reserve Regulatory Service* 4–181). This interpretation shall apply to the performance of management consulting services for commercial banks and any other type of depository institution.

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of such a real estate project to one or more investors, if—

(i) the financing arranged exceeds $1 million;

(ii) the bank holding company and its affiliates do not provide financing to the investors to acquire a real estate project for which the bank holding company arranges equity financing;

(iii) the bank holding company and its affiliates do not have an interest in or participate in managing, developing, or syndicating a real estate project for which it arranges equity financing, and do not promote or sponsor the development or syndication of such property; and

(iv) the fee received for arranging equity financing for a real estate project is not based on profits to be derived from the project and is not larger than the fee that would be charged by an unaffiliated intermediary.

(15) *Securities brokerage.* Providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing or investment advice or research services.

(16) *Underwriting and dealing in government obligations and money market instruments.* Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 USC 24 and 335, including bankers acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks.

(17) *Foreign exchange advisory and transactional services.* Providing, by any means, general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating, and managing their foreign exchange exposures; and transactional services with respect to foreign exchange by arranging for "swaps" among customers with complementary foreign exchange exposures and for the execution of foreign exchange transactions; provided the activity is conducted through a separately incorporated subsidiary of the bank holding company that—

(i) does not take positions in foreign exchange for its own account;

(ii) observes the standards of care and conduct applicable to fiduciaries with respect to its foreign exchange advisory and transactional services; and

(iii) does not itself execute foreign exchange transactions.

(18) *Futures commission merchant.* Acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account, if the activity is conducted through a separately incorporated subsidiary of the bank holding company that—

(i) does not become a clearing member of any exchange or clearing association that requires the parent corporation of the clearing member to also become a member of that exchange or clearing association unless a waiver of the requirement is obtained;

(ii) does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument;

(iii) time stamps orders of all customers to the nearest minute, executes all orders strictly in chronological sequence to the extent consistent with the customers' specifications, and executes all orders with reasonable promptness with due regard to market conditions;

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(iv) does not extend credit to customers for the purpose of meeting initial or maintenance margins required of customers except for posting margin on behalf of customers in advance of prompt reimbursement; and

(v) has and maintains capitalization fully adequate to meet its own commitments and those of its customers, including affiliates.

(19) *Investment advice on financial futures and options on futures.* Providing investment advice, including counsel, publications, written analyses and reports, as a futures commission merchant (FCM) authorized pursuant to paragraph (18) of this subsection or as a commodity trading advisor (CTA) registered with the Commodity Futures Trading Commission, with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to in paragraph (18), provided that the FCM or CTA—

(i) does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument; and

(ii) limits its advice to financial institutions and other financially sophisticated customers that have significant dealings or holdings in the underlying commodities, securities, or instruments.

(20) *Consumer financial counseling.* Providing advice, educational courses, and instructional materials to consumers on individual financial management matters, including debt consolidation, applying for a mortgage, bankruptcy, budget management, tax planning, retirement and estate planning, insurance and general investment management, provided—

(i) educational materials and presentations used by the counselor may not promote specific products and services;

(ii) the counselor advises each customer that the customer is not required to purchase any services from affiliates; and

(iii) the counselor does not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

This paragraph does not authorize the provision of advice on specific products or investments or the provision of portfolio investment advice or portfolio management, which are authorized under paragraphs (3) and (4)(iii) of this subsection subject to certain fiduciary standards. If consumer financial counseling is offered by a company that also offers securities-brokerage services pursuant to paragraph (15) of this subsection, the brokerage and counseling services must be provided by different personnel and in separate offices or in separate and distinctly marked areas.

(21) *Tax planning and preparation.* Providing individuals, businesses, and nonprofit organizations tax-planning and tax-preparation services, including advice and strategies to minimize tax liabilities, and the preparation of tax forms, provided—

(i) the materials used by the tax planner or preparer do not promote other specific products and services; and

(ii) the tax planner or preparer does not obtain or disclose confidential information concerning its customers without the customer's written consent or pursuant to legal process.

(22) *Check-guaranty services.* Authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services and purchasing from the merchant validly authorized checks that are subsequently dishonored, provided that the check guarantor does not discriminate against checks drawn on unaffiliated banks.

(23) *Operating collection agency.* Collecting overdue accounts receivable, either retail or commercial, provided the collection agency—

(i) does not obtain the names of customers of competing collection agencies from an affiliated depository institution that maintains trust accounts for those agencies; and

(ii) does not provide preferential treatment to an affiliate or a customer of such affiliate seeking collection of an outstanding debt.

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(24) *Operating credit bureau.* Maintaining files on the past credit history of consumers and providing that information to a credit grantor who is considering a borrower's application for credit, provided that the credit bureau does not provide preferential treatment to a customer of an affiliated financial institution.

SUBPART D—CONTROL AND DIVESTITURE PROCEEDINGS

SECTION 225.31—Control Proceedings

(a) *Preliminary determination of control.* (1) The Board may issue a preliminary determination of control under the procedures set forth in this section in any case in which—

(i) any of the presumptions of control set forth in paragraph (d) of this section is present; or

(ii) it otherwise appears that a company has the power to exercise a controlling influence over the management or policies of a bank or other company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the controlling company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* Within 30 calendar days of issuance by the Board of a preliminary determination of control or such longer period permitted by the Board, the company against whom the determination has been made shall—

(1) submit for the Board's approval a specific plan for the prompt termination of the control relationship;

(2) file an application under subpart B or C of this regulation to retain the control relationship; or

(3) contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(c) *Hearing and final determination.* (1) The Board shall order a formal hearing or other appropriate proceeding upon the request of a company that contests a preliminary determination that the company has the power to exercise a controlling influence over the management or policies of a bank or other company, if the Board finds that material facts are in dispute. The Board may also in its discretion order a formal hearing or other proceeding with respect to a preliminary determination that the company controls voting securities of the bank or other company under the presumptions in paragraph (d)(1) of this section.

(2) At a hearing or other proceeding, any applicable presumptions established by paragraph (d) of this section shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR 263).

(3) After considering the submissions of the company and other evidence, including the record of any hearing or other proceeding, the Board shall issue a final order determining whether the company controls voting securities, or has the power to exercise a controlling influence over the management or policies, of the bank or other company. If a control relationship is found, the Board may direct the company to terminate the control relationship or to file an application for the Board's approval to retain the control relationship under subpart B or C of this regulation.

(d) *Rebuttable presumptions of control.* The following rebuttable presumptions shall be used in any proceeding under this section:

(1) *Control of voting securities.*

(i) *Securities convertible into voting securities.* A company that owns, controls, or holds securities that are immediately convertible, at the option of the holder or owner, into voting securities of a bank or other company, controls the voting securities.

(ii) *Option or restriction on voting securities.* A company that enters into an agreement or understanding under which the rights of a holder of voting securities of a bank or other company are restricted in

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any manner controls the securities. This presumption does not apply where the agreement or understanding—

(A) is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares;

(B) is incident to a bona fide loan transaction; or

(C) relates to restrictions on transferability and continues only for the time necessary to obtain approval from the appropriate federal supervisory authority with respect to acquisition by the company of the securities.

(2) *Control over company.*

(i) *Management agreement.* A company that enters into any agreement or understanding with a bank or other company (other than an investment advisory agreement), such as a management contract, under which the first company or any of its subsidiaries directs or exercises significant influence over the general management or overall operations of the bank or other company controls the bank or other company.

(ii) *Shares controlled by company and associated individuals.* A company that, together with its management officials or principal shareholders (including members of the immediate families of either as defined in 12 CFR 206.2(k)), owns, controls, or holds with power to vote 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company controls the bank or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

(iii) *Common management officials.* A company that has one or more management officials in common with a bank or other company controls the bank or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the bank or other company, and no other person controls as much as 5 percent of the outstanding shares of any class of voting securities of the bank or other company.

(iv) *Shares held as fiduciary.* The presumptions in paragraphs (d)(2)(ii) and (iii) of this section do not apply if the securities are held by the company in a fiduciary capacity without sole discretionary authority to exercise the voting rights.

(e) *Presumptions of noncontrol.* (1) In any proceeding under this section, there is a presumption that any company that directly or indirectly owns, controls, or has power to vote less than 5 percent of the outstanding shares of any class of voting securities of a bank or other company does not have control over that bank or other company.

(2) In any proceeding under this section, or judicial proceeding under the BHC Act, other than a proceeding in which the Board has made a preliminary determination that a company has the power to exercise a controlling influence over the management or policies of the bank or other company, a company may not be held to have had control over the bank or other company at any given time, unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 percent or more of the outstanding shares of any class of voting securities of the bank or other company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

SECTION 225.32—Divestiture Proceedings

(a) *Ineffective divestitures.* (1) The divestiture of assets or voting securities by a bank holding company (or a company that would be a bank holding company but for the divestiture) is ineffective, and the divesting company shall be presumed to control the acquiring person or the divested assets or securities, if—

(i) the acquiring person is indebted in any manner to the divesting company; or

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(ii) the divesting company has any management official in common with the acquiring person.

(2) For the purposes of this section—

(i) "indebtedness" does not include routine business or personal credit that is unrelated to the divestiture transaction and that is extended by the divesting company in the ordinary course of its lending business; and

(ii) "divesting company" and "acquiring person" include their parent companies, subsidiaries, and, if the acquiring person is an individual, companies controlled by the individual.

(b) *Request for divestiture determination.* For any divestiture that is deemed ineffective under paragraph (a) of this section, the divesting company may request the Board to determine that the divestiture is in fact effective by submitting a letter that includes—

(1) a description of the divestiture transaction and the existing and prospective relationship between the divesting company and the acquiring person;

(2) evidence and argument demonstrating that the divesting company is not capable of controlling the acquiring person or the divested assets or securities; and

(3) a request for a hearing, if desired.

(c) *Hearing.* The Board shall order a formal hearing or other appropriate proceeding upon the request of a divesting company under paragraph (b) of this section, if the Board finds that material facts are in dispute. The Board may also order a formal hearing or other proceeding if, in the Board's judgment, such a proceeding would be appropriate.

(d) *Standards for making divestiture determination.* In acting on the request of a divesting company under paragraph (b) of this section, the Board shall consider the following factors, among others, in determining whether the divesting company is capable of controlling the acquiring person or the divested assets or securities:

(1) *Indebtedness of acquiring person to divesting company.*

(i) the terms of the indebtedness, including the amount of the indebtedness in relation to the total purchase price;

(ii) the ability of the acquiring person to repay the indebtedness; and

(iii) the manner in which the divesting company would dispose of the divested assets in the event it reacquires the assets as a result of default on the indebtedness.

(2) *Management official interlocks.* The extent of the involvement of the interlocking management official in the operations of the divesting company and the acquiring person, and the management official's relationship to the assets or securities being divested.

(e) *Final determination.* After considering the submission of the divesting company and other evidence, including the record of any hearing or other proceeding, the Board shall issue an order determining whether the company controls or is capable of controlling the acquiring person or the divested assets or securities.

(f) *Review of other divestitures.* In any divestiture of assets or securities by a company that is not covered under paragraph (a) of this section, the Board may review the divestiture to assure that the divesting company is not capable of controlling the acquiring person or the divested assets or securities.

SUBPART E—CHANGE IN BANK CONTROL

SECTION 225.41—Transactions Requiring Prior Notice

(a) *Prior-notice requirement.* (1) Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the Board 60 days' written notice, as specified in section 225.43 of this subpart, before acquiring control of a state member bank or bank holding company, unless the acquisition is exempt under section 225.42 of this subpart.

(2) For the purposes of this subpart, "acquisition" includes a purchase, assignment, transfer, or pledge of voting securities, or

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an increase in percentage ownership of a bank or other company resulting from a redemption of voting securities.

(b) *Acquisitions requiring prior notice.* The following transactions constitute, or are presumed to constitute, the acquisition of control under the Bank Control Act, requiring prior notice to the Board:

(1) the acquisition of any voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person (or persons acting in concert) owns, controls, or holds with power to vote 25 percent or more of any class of voting securities of the institution; or

(2) the acquisition of any voting securities of a state member bank or bank holding company if, after the transaction, the acquiring person (or persons acting in concert) owns, controls, or holds with power to vote 10 percent or more (but less than 25 percent) of any class of voting securities of the institution, and if—

(i) the institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 USC 78*l*); or

(ii) no other person will own a greater percentage of that class of voting securities immediately after the transaction.

(c) *Rebuttal of presumption of control.* Prior notice to the Board is not required for any acquisition of voting securities under the presumption set forth in paragraph (b)(2) of this section, if the Board finds that the acquisition will not result in control. The Board will afford the person seeking to rebut the presumption an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

(d) *Other transactions.* Transactions other than those set forth in paragraph (b)(2) resulting in a person's control of less than 25 percent of a class of voting securities of a state member bank or bank holding company do not result in control for purposes of the Bank Control Act.

SECTION 225.42—Transactions Not Requiring Prior Notice

The following transactions do not require prior notice to the Board under this subpart:

(a) *Increase of previously authorized acquisitions.* The acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person who has lawfully acquired and maintained control of 25 percent or more of that class of voting securities after filing the notice required under section 225.41(b)(1) of this subpart.

(b) *Acquisitions subject to approval under BHC Act or Bank Merger Act.* Any acquisition of voting securities subject to approval under section 3 of the BHC Act (section 225.11 of subpart B), or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 USC 1828(c)).

(c) *Transactions exempt under BHC Act.* Any acquisition described in sections 2(a)(5) or 3(a)(A) or (B) of the BHC Act (12 USC 1841(a)(5), 1842(a)(A) and (B)) by a person described in those provisions.

(d) *Grandfathered control relationships.* (1) The acquisition of additional voting securities of a state member bank or bank holding company by a person who continuously since March 9, 1979 (or since that institution commenced business, if later) held power to vote 25 percent or more of any class of voting securities of that institution; or

(2) the acquisition of additional voting securities of a state member bank or bank holding company by a person who is presumed under section 225.41(b)(2) of this subpart to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent of any class of voting securities of the institution.

(e) *Acquisition in satisfaction of debts previously contracted or through inheritance or gift.* Any acquisition of voting securities, which would otherwise require a notice under this subpart, in satisfaction of a debt previously contracted in good faith, or through inheri-

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tance or a bona fide gift, if the acquiring person notifies the appropriate Reserve Bank within 30 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank.

(f) *Proxy solicitation.* The acquisition of the power to vote securities of a state member bank holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purpose of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting.

(g) *Stock dividends.* The receipt of voting securities of a state member bank or bank holding company through a stock dividend or stock split if the proportional interest of the recipient in the institution remains substantially the same.

(h) *Acquisition of foreign banking organization.* The acquisition of voting securities of a qualifying foreign banking organization. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 USC 1817(j)(9), (10), and (12)).

SECTION 225.43—Procedures for Filing, Processing, and Acting on Notices

(a)(1) *Filing notice.* A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain the information required by paragraph 6 of the Change in Bank Control Act (12 USC 1817(j)(6)), or prescribed in the designated Board form. With respect to personal financial statements required by paragraph 6(B) of the Change in Bank Control Act, an individual may include a statement of assets and liabilities as of a date within 90 days of filing the notice, a brief income summary, and a description of any subsequent material changes, subject to the authority of the Reserve Bank or the Board to require additional information.

(2) *Acceptance of notice.* The 60-day notice period specified in section 225.41 of this subpart shall commence on the date all required information is received by the appropriate Reserve Bank or the Board. The Reserve Bank shall notify the person or persons submitting a notice under this subpart of the date all such required information is received and the notice is accepted for processing.

(3) *Publication.* (i) *Newspaper announcement.* A person(s) filing a notice under this subpart shall publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office of the state member bank to be acquired is located or, in the case of a proposed acquisition of a bank holding company, in the community in which its head office is located and in the community in which the head office of each of its subsidiary banks is located. The announcement shall be published no earlier than 10 calendar days prior to the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after acceptance of the notice by the Reserve Bank. A copy of the announcement and the publisher's affidavit of publication shall be provided to the appropriate Reserve Bank.

(ii) *Contents of newspaper announcement.* The newspaper announcement shall state—

(A) the name of each person identified in the notice as a proposed acquiror of the bank or bank holding company and the percentage of shares proposed to be acquired;

(B) the name of the bank or bank holding company to be acquired, including, in the case of a bank holding company, the name of each of its subsidiary banks; and

(C) a statement that interested persons may submit comments on the notice to the Board or the appropriate Reserve Bank for a period of 20 days or such shorter period as may be provided pursuant to paragraph (a)(3)(v) of this section.

(iii) *Federal Register announcement.* The Board will, upon filing of a notice

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under this subpart, publish announcement in the *Federal Register* of receipt of the notice. The *Federal Register* announcement will contain the information required under paragraph (a)(3)(ii)(A) and (a)(3)(ii)(B) of this section and a statement that interested persons may submit comments on the proposed acquisition for a period of 15 days or such shorter period as may be provided pursuant to paragraph (a)(3)(v) of this section. The Board may waive publication in the *Federal Register* if the Board determines that such action is appropriate.

(iv) *Delay of publication.* The Board may permit delay in the publication required under paragraphs (a)(3)(i) and (a)(3)(iii) if the Board determines, for good cause shown, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate Reserve Bank.

(v) *Shortening or waiving notice.* In circumstances requiring prompt action, the Board may shorten the public-comment period required under this paragraph. The Board may also waive the newspaper-publication and solicitation-of-public-comment requirements of this paragraph, or it may act on a notice before the expiration of a public-comment period, if it certifies in writing that disclosure of the notice, solicitation of public comment, or delay until expiration of the public-comment period would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

(4) *Consideration of public comments.* In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or *Federal Register* announcement, whichever is later. At the Board's option, comments received after this period may, but need not, be considered.

(5) *Standing.* No person (other than the acquiring person) who submits comments or information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

(b) *Advice to bank supervisory agencies.*

(1) Upon accepting a notice relating to acquisition of securities of a state member bank, the Reserve Bank shall send a copy of the notice to the appropriate state bank supervisor, which shall have 30 calender days from the date the notice is sent in which to submit its views and recommendations to the Board. The Reserve Bank shall also send a copy of any notice it accepts to the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

(2) If the Board finds that it must act immediately in order to prevent the probable failure of the bank or bank holding company involved, the Board may dispense with or modify the requirements for notice to the state supervisor.

(c) *Time period for Board action.*

(1) *Consummation of acquisition.* (i) A proposed acquisition may be consummated 60 days after submission to the Reserve Bank of a complete notice under paragraph (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period as provided under paragraph (c)(2) of this section.

(ii) A proposed acquisition for which notice has been filed under paragraph (a) of this section may be consummated before the expiration of the 60-day period if the Board notifies the acquiring person in writing of the Board's intention not to disapprove the acquisition.

(2) *Extensions of time period.* (i) The Board may extend the 60-day period in paragraph (c)(1) of this section for an additional 30 days by notifying the acquiring persons.

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each if the Board determines that—

(A) any acquiring person has not fur-

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nished all the information required under paragraph (a) of this section;

(B) any material information submitted is substantially inaccurate;

(C) it is unable to complete the investigation of any acquiring person because of inadequate cooperation or delay by that person; or

(D) additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of chapter 53 of title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefor and shall include a statement of the information, if any, deemed incomplete or inaccurate.

(d)(1) *Investigation and report.* After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under paragraph (a) of this section. In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any bank or bank holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

(e) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice. The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors set forth in paragraph 7 of the Bank Control Act (12 USC 1817(j)(7)) (i.e., competitive, financial, managerial, banking, or incompleteness of information).

(f) *Disapproval and hearing.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action. Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

SUBPART F—LIMITATIONS ON NONBANK BANKS

SECTION 225.51—Seven Percent Growth Limit for Nonbank Banks

(a) *Period for determining compliance.* A nonbank bank's annual rate of asset growth for purposes of paragraph (b) shall be determined for 12-month periods that begin on October 1 of each year and end on September 30 of the following year, unless the bank elects to use the alternative method described in paragraph (c). The initial 12-month period shall commence on October 1, 1988, and expire on September 30, 1989, unless the Board establishes a different period pursuant to paragraph (d).

(b) *Computing annual rate of asset growth.*

(1) *Initial 12-month period.* For the initial 12-month period beginning on October 1, 1988, the average of the nonbank bank's total assets as reported on Schedule RC-K of its Report of Condition for the four quarters during this period may not increase by more than 7 percent of the nonbank bank's

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initial base. The nonbank bank may determine its initial base under any of the following methods:

(i) its total assets as reported on Schedule RC-K of its Report of Condition for the quarter ending September 30, 1988, divided by 1.601; or

(ii) its total assets on August 10, 1988, divided by 1.567, unless the Board determines pursuant to paragraph (d) that such amount may not be used; or

(iii) the average of its total assets as reported on Schedule RC-K of its Report of Condition for the fourth quarter of 1987 and the first three quarters of 1988.

(2) *Succeeding 12-month periods.* For each 12-month period after the initial period, the average of the nonbank bank's total assets as reported on Schedule RC-K of its Report of Condition for the four quarters during that period may not increase by more than 7 percent of the average of its total assets as reported on Schedule RC-K of its Report of Condition for the four quarters in the preceding 12-month period.

(c) *Alternative method to compute annual rate of asset growth.*

(1) *Quarterly measurement permitted.* In lieu of the methods for measuring compliance with the asset-growth rate described in paragraph (b), a nonbank bank may elect to have its compliance with the growth rate determined in the following manner: its total assets as reported on Schedule RC-K of its Report of Condition for each quarter ending after August 10, 1989, may not increase by more than 7 percent of its total assets as reported on Schedule RC-K of its Report of Condition for the same quarter of the previous year.

(2) *Initial quarter.* In measuring compliance with the growth rate under paragraph (c)(1) for the third quarter of 1989, the nonbank bank may elect to use its assets on August 10, 1988, as the base rather than the total assets for the third quarter of 1988 as reported on Schedule RC-K of its Report of Condition.

(3) *Notice required.* A nonbank bank electing to compute its asset growth pursuant to this paragraph shall notify the Board by October 15, 1988, of this election. The nonbank bank may not thereafter alter its election.

(d) *Determination of total assets on August 10, 1988.* If the Board determines that a nonbank bank has engaged in transactions that have artificially inflated its total assets on August 10, 1988, and that are unrelated to its normal business activities, the Board may require that—

(1) the nonbank exclude such amounts in calculating its total assets on August 10, 1988, for purposes of paragraph (b)(1)(ii); or

(2) the initial 12-month period for determining compliance with the 7 percent growth rate shall commence on a date later than August 10, 1988, and the institution's total assets on that later date shall be used instead of the bank's total assets on August 10, 1988, for purposes of measuring compliance with the 7 percent growth rate under paragraph (b)(1).

(e) *Required reports.* (1) A nonbank bank shall file with the Board by October 15, 1988, a statement indicating the method it has elected to compute its initial base for purposes of paragraph (b)(1).

(2) A nonbank bank electing to use its actual total assets on August 10, 1988, as its initial base for purposes of paragraph (b)(1), shall report that figure to the Board by October 15, 1988, and the nonbank bank's total assets for the third calendar quarter of 1988 as required to be reported on Schedule RC-K of its Report of Condition for that quarter.

SECTION 225.52—Limitation on Overdrafts

(a) *Definitions.* For purposes of this section—

(1) "Account" means a reserve account, clearing account, or deposit account as defined in the Board's Regulation D (12 CFR 204.2(a)(1)(i)), that is maintained at a Federal Reserve Bank or nonbank bank.

(2) "Cash item" means (i) a check other than a check classified as a noncash item; or (ii) any other item payable on demand and

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collectible at par that the Federal Reserve Bank of the District in which the item is payable is willing to accept as a cash item.

(3) "Discount-window loan" means any credit extended by a Federal Reserve Bank to a nonbank bank or industrial bank pursuant to the provisions of the Board's Regulation A (12 CFR 201).

(4) "Industrial bank" means an institution as defined in section 2(c)(2)(H) of the BHC Act (12 USC 1841(c)(2)(H)).

(5) "Noncash item" means an item handled by a Reserve Bank as a noncash item under the Reserve Bank's "Collection of Noncash Items Operating Circular" (e.g., a maturing banker's acceptance or a maturing security, or a demand item, such as a check, with special instructions or an item that has not been prepinted or post-encoded).

(6) "Other nonelectronic transactions" include all other transactions not included as funds transfers, book-entry securities transfers, cash items, noncash items, automated clearinghouse transactions, net-settlement entries, and discount-window loans (e.g., original issue of securities or redemption of securities).

(7) An "overdraft" in an account occurs whenever the Federal Reserve Bank, nonbank bank, or industrial bank holding an account posts a transaction to the account of the nonbank bank, industrial bank, or affiliate that exceeds the aggregate balance of the accounts of the nonbank bank, industrial bank, or affiliate, as determined by the posting rules set forth in paragraphs (d) and (e) of this section and continues until the aggregate balance of the account is zero or greater.

(8) "Transfer item" means an item as defined in subpart B of Regualtion J (12 CFR 210.25 et seq.).

(b) *Restriction on overdrafts.* (1) *Affiliates.* Neither a nonbank bank nor an industrial bank shall permit any affiliate to incur any overdraft in its account with the nonbank bank or industrial bank.

(2) *Nonbank banks or industrial banks.*

(i) No nonbank bank or industrial bank shall incur any overdraft in its account at a Federal Reserve Bank on behalf of an affiliate.

(ii) An overdraft by a nonbank bank or industrial bank in its account at a Federal Reserve Bank shall be deemed to be on behalf of an affiliate whenever—

(A) a nonbank bank or industrial bank holds an account for an affiliate from which third-party payments can be made; and

(B) when the posting of an affiliate's transaction to the nonbank bank's or industrial bank's account at a Reserve Bank creates an overdraft in its account at a Federal Reserve Bank or increases the amount of an existing overdraft in its account at a Federal Reserve Bank

(c) *Permissible overdrafts.* The following are permissible overdrafts not subject to paragraph (b):

(1) *Inadvertent error.* An overdraft in its account by a nonbank bank or its affiliate, or an industrial bank or its affiliate, that results from an inadvertent computer error or inadvertent accounting error, that was not reasonably foreseeable or could not have been prevented through the maintenance of procedures reasonably adopted by the nonbank bank or affiliate to avoid such overdraft; and

(2) *Fully secured primary-dealer affiliate overdrafts.* (i) An overdraft incurred by an affiliate of a nonbank bank, which affiliate is recognized as a primary dealer by the Federal Reserve Bank of New York, in the affiliate's account at the nonbank bank, or an overdraft incurred by a nonbank bank on behalf of its primary-dealer affiliate in the nonbank bank's account at a Federal Reserve Bank; *provided* the overdraft is fully secured by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book-entry system.

(ii) An overdraft by a nonbank bank in its account at a Federal Reserve Bank

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that is on behalf of a primary-dealer affiliate is fully secured when that portion of its overdraft at the Federal Reserve Bank that corresponds to the transaction posted for an affiliate that caused or increased the nonbank bank's overdraft is fully secured in accordance with paragraph (c)(2)(iii).

(iii) An overdraft is fully secured under paragraph (c)(2)(i) when the nonbank bank can demonstrate that the overdraft is secured, at all times, by a perfected security interest in specific, identified obligations described in paragraph (c)(2)(i) with a market value that, in the judgment of the Reserve Bank holding the nonbank bank's account, is sufficiently in excess of the amount of the overdraft to provide a margin of protection in a volatile market or in the event the securities need to be liquidated quickly.

(d) *Posting by Federal Reserve Banks.* For purposes of determining the balance of an account under this section, payments and transfers by nonbank banks and industrial banks processed by the Federal Reserve Banks shall be considered posted to their accounts at Federal Reserve Banks as follows:

(1) *Funds transfers.* Transfer items shall be posted—

(i) to the transferor's account at the time the transfer is actually made by the transferor's Federal Reserve Bank; and

(ii) to the transferee's account at the time the transferee's Reserve Bank sends the transfer item or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(2) *Book-entry securities transfers against payment.* A book-entry securities transfer against payment shall be posted—

(i) to the transferor's account at the time the entry is made by the transferor's Reserve Bank; and

(ii) to the transferee's account at the time the entry is made by the transferee's Reserve Bank.

(3) *Discount-window loans.* Credit for a discount-window loan shall be posted to the account of a nonbank bank or industrial bank at the close of business on the day that it is made or such earlier time as may be specifically agreed to by the Federal Reserve Bank and the nonbank bank under the terms of the loan. Debit for repayment of a discount-window loan shall be posted to the account of the nonbank bank or industrial bank as of the close of business on the day of maturity of the loan or such earlier time as may be agreed to by the Federal Reserve Bank and the nonbank bank or required by the Federal Reserve Bank under the terms of the loan.

(4) *Other transactions.* Total aggregate credits for automated clearinghouse transfers, cash items, noncash items, net-settlement entries, and other nonelectronic transactions shall be posted to the account of a nonbank bank or industrial bank as of the opening of business on settlement day. Total aggregate debits for these transactions and entries shall be posted to the account of a nonbank or industrial bank as of the close of business on settlement day.

(e) *Posting by nonbank banks and industrial banks.* For purposes of determining the balance of an affiliate's account under this section, payments and transfers through an affiliate's account at a nonbank bank or industrial bank shall by posted as follows:

(1) *Funds transfers.* (i) Fedwire transfer items shall be posted—

(A) to the transferor affiliate's account no later than the time the transfer is actually made by the transferor's Federal Reserve Bank; and

(B) to the transferee affiliate's account no earlier than the time the transferee's Reserve Bank sends the transfer item, or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(ii) For funds transfers not sent or received through Federal Reserve Banks, debits shall be posted to the transferor affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer. Credits shall not be posted to the transferee affiliate's account before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

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(2) *Book-entry securities transfers against payment.*

(i) A book-entry securities transfer against payment shall be posted—

(A) to the transferor affiliate's account not earlier than the time the entry is made by the transferor's Reserve Bank; and

(B) to the transferee affiliate's account not later than the time the entry is made by the transferee's Reserve Bank.

(ii) For book-entry securities transfers against payment that are not sent or received through Federal Reserve Banks, enteries shall be posted—

(A) to the buyer-affiliate's account not later than the time the nonbank bank or industrial bank becomes obligated on the transfer; and

(B) to the seller-affiliate's account not before the nonbank bank or industrial bank has received actually and finally collected funds for the transfer.

(3) *Other transactions.* (i) *Credits.* Except as otherwise provided in this paragraph, credits for cash items, noncash items, ACH transfers, net-settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account on the day of the transaction (i.e., settlement day for ACH transactions or the day of credit for check transactions), but no earlier than the Federal Reserve Bank's opening of business on that day. Credit for cash items that are required by federal or state statute or regulation to be made available to the depositor for withdrawal prior to the posting time set forth in the preceding paragraph shall be posted as of the required availability time.

(ii) *Debits.* Debits for cash items, noncash items, ACH transfers, net-settlement entries, and all other nonelectronic transactions shall be posted to an affiliate's account on the day of the transaction (e.g., settlement day for ACH transactions or the day of presentment for check transactions), but no later than the Federal Reserve Bank's close of business on that day. If a check drawn on an affiliate's account or an ACH debit transfer received by an affiliate is returned timely by the nonbank bank or industrial bank in accordance with applicable law and agreements, no entry need be posted to the affiliate's account for such item.

APPENDIX A—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

See the Board pamphlet "Capital Adequacy Guidelines."

APPENDIX B—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks: Leverage Measure

See the Board pamphlet "Capital Adequacy Guidelines."

APPENDIX C—Policy Statement on Formation of Small One-Bank Holding Companies

In acting on applications filed under the Bank Holding Company Act, the Board has adopted, and continues to follow, the principle that bank holding companies should serve as a source of strength for their subsidiary banks. When bank holding companies incur debt and rely upon the earnings of their subsidiary banks as the means of repaying such debt, a question arises as to the probable effect upon the financial condition of the company and its subsidiary bank or banks.

The Board believes that a high level of debt at the parent holding company level impairs the ability of a bank holding company to provide financial assistance to its subsidiary bank and in some cases the servicing requirements on such debt may be a significant drain on the bank's resources. For these reasons the Board has not favored the use of acquisition debt in the formation of bank holding companies. Nevertheless, the Board has recognized that the transfer of ownership of small banks often requires the use of acquisition debt. The Board therefore has permitted the formation of small one-bank holding companies with

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debt levels higher than would be permitted for larger or multibank holding companies. Approval of these applications has been given on the condition that the small one-bank holding companies demonstrate the ability to service the acquisition debt without straining the capital of their subsidiary bank and, further, that such companies restore their ability to serve as a source of strength for their subsidiary bank within a relatively short period of time.

In the interest of furthering its policy of facilitating the transfer of ownership in banks without diluting bank safety and soundness, the Board has reexamined the analytical framework and financial criteria it applies when considering the formation of small one-bank holding companies and has adopted certain revisions in its procedures and standards as described below.

The revised criteria shift the focus from debt repayment to the relationship between debt and equity at the parent holding company. The holding company will have the option of improving the relationship of debt to equity by repaying the principal amount of its debt or through the retention of earnings, or both. Under these procedures, newly organized small one-bank holding companies will be expected to reduce the relationship of their debt to equity over a reasonable period of time to a level comparable to that maintained by many large and multibank holding companies.

In general, this policy is intended to apply only to one-bank holding companies that would not have significant leveraged nonbank activities and whose subsidiary bank would have total assets of approximately $150 million or less at the time the application is filed. Small one-bank holding companies formed before the effective date of this policy may switch to a plan that adheres to the intent of this policy provided they comply with criteria 2, 3, and 4 set forth below.

General

In evaluating applications filed pursuant to section 3(a)(1) of the Bank Holding Company Act, as amended, when the applicant intends to incur debt to finance the acquisition of a small bank, the Board will take into account a full range of financial and other information, including the recent trend and stability of earnings of the bank, the past and prospective growth of the bank, the quality of the bank's assets, the ability of the applicant to meet debt servicing requirements without placing an undue strain on the bank's resources, and the record and competency of management of the applicant and the bank. In addition, the Board will require applicants to meet the minimum requirements set forth below. As a general rule, failure to meet any of these requirements will result in denial of the application; however, the Board reserves the right to make exceptions if the circumstances warrant.

1. *Minimum downpayment.* The amount of acquisition debt should not exceed 75 percent of the purchase price of the bank to be acquired. When the owner(s) of the holding company incur debt to finance the purchase of the bank, such debt will be considered acquisition debt even though it does not represent an obligation of the bank holding company, unless the owner(s) can demonstrate that such debt can be serviced without reliance on the resources of the bank or bank holding company.

2. *Maintenance of adequate capital.* An applicant proposing to use acquisition debt must demonstrate to the satisfaction of the Board that any debt servicing requirements to which the bank holding company may be subject would not cause the subsidiary bank's ratio of gross capital to assets to fall below 8 percent during the 12-year period following consummation of the acquisition. Gross capital is defined as the sum of total stockholders' equity, the allowance for possible loan losses, and subordinated capital notes and debentures.

3. *Reduction in parent company leverage.* The applicant must demonstrate to the satisfaction of the Board that the parent holding company's ratio of debt to equity will decline to 30 percent within 12 years after consummation of the acquisition. The holding company must also demonstrate that it will be able to safely meet debt servicing and other requirements imposed by its creditors.

The term "debt," as used in the ratio of debt to equity, means any borrowed funds

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(exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

The term "equity," as used in the ratio of debt to equity, means the total stockholders' equity of the bank holding company adjusted to reflect the periodic amortization of "goodwill" (defined as the excess of cost of any acquired company over the sum of the amounts assigned to identifiable assets acquired, less liabilities assumed) in accordance with generally accepted accounting principles. In determining the total amount of stockholders' equity, the bank holding company should account for its investments in the common stock of subsidiaries by the equity method of accounting.

Ordinarily the Board does not view redeemable preferred stock as a substitute for common stock in a one-bank holding company formation. Nevertheless, to a limited degree and under certain circumstances the Board will consider redeemable preferred stock as equity in the capital accounts of the holding company if the following conditions are met: (1) the preferred stock is redeemable only at the option of the issuer and (2) the debt to equity ratio of the holding company would be at or remain below 30 percent following the redemption or retirement of any preferred stock. Preferred stock that is convertible into common stock of the holding company may be treated as equity.

4. *Dividend restrictions.* The bank holding company is not expected to pay any corporate dividends on common stock until such time as its debt to equity ratio is below 30 percent. However, some dividends may be permitted provided all of the following conditions are met: (a) the applicant has begun making scheduled repayments of principal on the acquisition debt; (b) such scheduled repayments of principal are reasonable in amount, will be made at least annually, and will allow for the retirement of the acquisition debt over a period not to exceed 25 years; and (c) the applicant can clearly demonstrate at the time the application is filed that such dividends will not jeopardize the ability of the holding company to reduce its debt to equity ratio to 30 percent within 12 years of consummation of the proposal or cause the gross capital to assets of the subsidiary bank to fall below 8 percent over the same period. Also, it is expected that dividends will be eliminated if the holding company is not meeting the projections made at the time the application was filed regarding the ability of the holding company to reduce the debt to equity ratio to 30 percent within 12 years of consummation of the proposal.

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Bank Holding Company Act of 1956

12 USC 1841 et seq.; 70 Stat. 133, Pub. L. 84-511 (May 9, 1956)

Section

2 Definitions
3 Acquisition of bank shares or assets
4 Interests in nonbanking organizations
5 Administration
6 [Repealed]
7 Reservation of rights to States
8 Penalties
9 Judicial review
10 Tax provisions
11 Saving provision
12 Separability of provisions

To define bank holding companies, control their future expansion, and require divestment of their nonbanking interests.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bank Holding Company Act of 1956."

* * * * *

SECTION 2—Definitions (12 USC 1841)

(a) (1) Except as provided in paragraph (5) of this subsection, *"bank holding company"* means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act.

(2) Any company has control over a bank or over any company if—

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this Act, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under paragraph (2)(C).

(5) Notwithstanding any other provision of this subsection.

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (g) of this section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; except that this limitation is applicable in the case of a bank or company acquiring such shares prior to the date of enactment of the Bank Holding Company Act Amendments of 1970 only if the bank or company has the right consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship to divest itself of such voting rights and fails to

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exercise that right to divest within a reasonable period not to exceed one year after the date of enactment of the Bank Holding Company Act Amendments of 1970.

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

(C) No company formed for the sole purpose of participating in a proxy solicitation is a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation.

(D) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The Board is authorized upon application by a company to extend, from time to time for not more than one year at a time, the two-year period referred to herein for disposing of any shares acquired by a company in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years.

(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which—

(i) is wholly owned by thrift institutions or savings banks; and

(ii) is restricted to accepting—

(I) deposits from thrift institutions or savings banks;

(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

(III) deposits of public moneys.

(F) No trust company or mutual savings bank which is an insured bank under the Federal Deposit Insurance Act is a bank holding company by virtue of its direct or indirect ownership or control of one bank located in the same State, if (i) such ownership or control existed on the date of enactment of the Bank Holding Company Act Amendments of 1970 and is specifically authorized by applicable State law, and (ii) the trust company or mutual savings bank does not after that date acquire an interest in any company that, together with any other interest it holds in that company, will exceed 5 per centum of any class of the voting shares of that company, except that this limitation shall not be applicable to investments of the trust company or mutual savings bank, direct and indirect, which are otherwise in accordance with the limitations applicable to national banks under section 5136 of the Revised Statutes (12 U.S.C. 24).

(6) For the purposes of this Act, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

(b) *"Company"* means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State. "Company covered in 1970" means a company which becomes a bank holding company as a result of the enactment of the Bank Holding Company Act Amendments of 1970 and which would have been a bank holding company on June 30, 1968, if those amendments had been enacted on that date.

(c) *Bank defined.** For purposes of this Act—

(1) Except as provided in paragraph (2), the term "bank" means any of the following:

(A) An insured bank as defined in sec-

*See note at the end of this section.

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tion 3(h) of the Federal Deposit Insurance Act.

(B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both—

(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(ii) is engaged in the business of making commercial loans.

(2) The term "bank" does not include any of the following:

(A) A foreign bank which would be a bank within the meaning of paragraph (1) solely because such bank has an insured or uninsured branch in the United States.

(B) An insured institution (as defined in subsection (j)).

(C) An organization that does not do business in the United States except as an incident to its activities outside the United States.

(D) An institution that functions solely in a trust or fiduciary capacity, if—

(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(iv) such institution does not—

(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act; or

(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act.

(E) A credit union (as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act).

(F) an institution which—

(i) engages only in credit card operations;

(ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

(iii) does not accept any savings or time deposit of less than $100,000;

(iv) maintains only one office that accepts deposits; and

(v) does not engage in the business of making commerical loans.

(G) An organization operating under section 25 or section 25(a) of the Federal Reserve Act.

(H) an industrial loan company, industrial bank, or other similar institution which is—

(i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act—

(I) which does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

(II) which has total assets of less than $100,000,000; or

(III) the control of which is not acquired by any company after the date of the enactment of the Competitive Equality Amendments of 1987; or

(ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987,

except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such

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overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate.

(I) The Investors Fiduciary Trust Company, located in Kansas City, Missouri, so long as such institution—

(i) engages only in trust, fiduciary, and agency activities in which it was lawfully engaged on March 5, 1987;

(ii) engages in such activities only at the same number of locations at which such activities were conducted on such date;

(iii) does not accept demand deposits other than demand deposits which are maintained by such institution in—

(I) a trust or fiduciary capacity;

(II) the institution's capacity as a custodian or as a paying, transfer, shareholder servicing, securities clearing, escrow, or dividend disbursing agent; or

(III) any capacity which is incidental to the trust or fiduciary activities of the institution;

(iv) does not engage in the business of making commercial loans;

(v) does not exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act; and

(vi) is not directly or indirectly controlled by any company other than a company which directly or indirectly controlled such institution on March 5, 1987.

(J) A savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which—

(i) is an insured bank (as defined in section 3(h) of such Act);

(ii) is a subsidiary of the Great Western Financial Corporation as a result of an approval in writing by the State bank supervisor of the State of New York before June 30, 1987;

(iii) meets or exceeds the investment requirements which an insured institution must meet in order to be a qualified thrift lender under section 408(o) of the National Housing Act; and

(iv) does not, directly, or through insurance products such savings bank receives from or provides to the Great Western Financial Corporation, engage in the sale or underwriting of insurance,

except that this subparagraph shall cease to apply with respect to such savings bank or any successor institution if any deposits of any other subsidiary or affiliate of the Great Western Financial Corporation which are subject to an assessment of an insurance premium under subsection (b) or (c) of section 404 of the National Housing Act are, directly or indirectly by any device whatsoever, transferred to or acquired by such savings bank or any successor institution which would have the effect of materially reducing such premium assessments. The exemption provided by this subparagraph shall cease to apply if Great Western Financial Corporation uses such savings bank or any successor institution as a vehicle to move such Corporation from Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance.

(3) The term "District bank" means any bank operating under the Code of Law for the District of Columbia.

(d) *"Subsidiary"*, with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Board, after notice and opportunity for hearing.

(e) The term *"successor"* shall include any

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company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The Board may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this Act.

(f) *"Board"* means the Board of Governors of the Federal Reserve System.

(g) For the purposes of this Act—

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company;

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company; and

(3) shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

(h)(1) Except as provided by paragraph (2), the application of this Act and of section 23A of the Federal Reserve Act (12 U.S.C. 371), as amended, shall not be affected by the fact that a transaction takes place wholly or partly outside the United States or that a company is organized or operates outside the United States.

(2) Except as provided in paragraph (3), the prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. For the purpose of this subsection, the term "section 2(h)(2) company" means any company whose shares are held pursuant to this paragraph.

(3) Nothing in paragraph (2) authorizes a section 2(h)(2) company to engage in (or acquire or hold more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in) any banking, securities, insurance, or other financial activities, as defined by the Board, in the United States. This paragraph does not prohibit a section 2(h)(2) company from holding shares that were lawfully acquired before the date of enactment of the Competitive Equality Banking Act of 1987.

(4) No domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of a section 2(h)(2) company may extend credit to a domestic office or subsidiary of such section 2(h)(2) company on terms more favorable than those afforded similar borrowers in the United States.

(5) No domestic banking office or bank subsidiary of a bank holding company that controls a section 2(h)(2) company may offer or market products or services of such section 2(h)(2) company, or permit its products or services to be offered or marketed by or through such section 2(h)(2) company, unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date.

(i) For purposes of this Act, the term *"thrift institution"* means—

(1) any domestic building and loan or savings and loan association;

(2) any cooperative bank without capital

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stock organized and operated for mutual purposes and without profit;

(3) any Federal savings bank; and

(4) any State-chartered savings bank the holding company of which is registered pursuant to section 408 of the National Housing Act.

(j) For purposes of this Act, the term *"insured institution"* has the meaning given to such term in section 408(a)(1) of the National Housing Act.*

(k) For purposes of this Act, the term *"affiliate"* means any company that controls, is controlled by, or is under common control with another company.

(*l*) For purposes of this Act, the term *"savings bank holding company"* means any company which controls one or more qualified savings banks if the aggregate total assets of such savings banks constitute, upon formation of the holding company and at all times thereafter, at least 70 percent of the total assets of such company.

(m) For purposes of this Act, the term *"qualified savings bank"*—

(1) means any savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which was organized on or before March 5, 1987; and

(2) includes any cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) and any interim savings bank that is established to facilitate a corporate reorganization, or the formation of a holding company, involving a savings bank described in paragraph (1).

[12 USC 1841. As amended by acts of July 1, 1966 (80 Stat. 236), Dec. 31, 1970 (84 Stat. 1760); Sept. 17, 1978 (92 Stat. 623); Oct. 15, 1982 (96 Stat. 1479, 1504, 1512); and Aug. 10, 1987 (101 Stat. 555, 557, 562, 584). The date of enactment of the Bank Holding Company Act Amendments of 1970 referred to in this section is Dec. 31, 1970.

Subsection (h) of section 101 of the Competitive Equality Banking Act of 1987 (101 Stat. 554), which amended this section, reads as follows:

(h) 1987 *amendment transition rule.*

(1) *Delay in application of amendment to certain institutions.* If—

(A) on March 5, 1987, an institution was not a bank (as defined in section 2(c) of the Bank Holding Company Act of 1956), as in effect on such date; and

(B) any person which had a controlling interest in such institution on March 5, 1987, made a public announcement before such date that the transfer or other disposition of such person's controlling interest in such institution was being considered,

the institution shall not become a bank (for purposes of the Bank Holding Company Act of 1956) due to the amendment made to such section 2(c) by this section before the date on which such institution fails to meet any requirement of paragraph (2).

(2) *Requirements for application of subsection.* This subsection shall not apply with respect to any institution described in paragraph (1) unless—

(A) the transfer or other disposition of the controlling interest referred to in such paragraph is completed, or an agreement to make such transfer or other disposition is in effect (or is subject only to final approval by the appropriate Federal and State regulatory agencies), before the end of the 180-day period beginning on the date of the enactment of this title;

(B) a written notice by the person acquiring a controlling interest in such institution (pursuant to the transfer or other disposition described in subparagraph (A)) of such person's intention to operate such institution as an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956, as in effect after the enactment of this title is filed with the Board before the end of the 7-day period beginning on the later of the date of such transfer (or other disposition) or the date of the enactment of this title; and

(C) the operation of such institution as an institution described in such section 2(c)(2)(F) begins before the end of the 180-day period beginning on the date the transfer (or other disposition) described in subparagraph (A) is completed.

(3) *Controlling interest.* For purposes of this subsection, a person has a controlling interest in any institution if such person controls—

(A) such institution; or

(B) any company which controls such institution, as determined in accordance with the provisions of subsections (b) and (g) of section 2 of the Bank Holding Company Act of 1956.]

SECTION 3—Acquisition of Bank Shares or Assets (12 USC 1842)

(a) *Prior approval of Board as necessary; exceptions; subsequent approval or disposition upon disapproval.* It shall be unlawful, except with the prior approval of the Board, (1) for

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* Section 408(a)(1)(A) of the National Housing Act (12 USC 1730a(a)(1)(A)) reads as follows:

(a)(1) As used in this section, unless the context otherwise requires—

(A) "insured institution" means a Federal savings and loan association, a Federal savings bank, a building and loan, savings and loan or homestead association or a cooperative bank, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and shall include a Federal savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation;

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any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company; (3) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (4) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (5) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g), or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after the date of enactment of this Act in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; or (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition. The Board is authorized upon application by a bank to extend, from time to time for not more than one year at a time, the two-year period referred to above for disposing of any shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith, if, in the Board's judgment, such an extension would not be detrimental to the public interest, but no such extension shall in the aggregate exceed three years. For the purpose of the preceding sentence, bank shares acquired after the date of enactment of the Bank Holding Company Act Amendments of 1970 [December 31, 1970] shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, but in such instances acquisitions may be made without prior approval of the Board if the Board, upon application filed within ninety days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b) *Notice and hearing requirements.*

(1) Upon receiving from a company any application for approval under this section, the Board shall give notice to the Comptroller of the Currency, if the applicant company or any bank the voting shares or assets of which are sought to be required is a national banking association or a District bank, or to the appropriate supervisory authority of the interested State, if the applicant company or any bank the voting shares or assets of which are sought to be acquired is a State bank, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be. The views and recommendations shall be submitted within thirty calendar days of the date on which notice is given, or within ten calendar days of such date if the Board advises the Comptroller of the Currency or the State supervisory authority that an emergency exists requiring expeditious action. If the thirty-day notice period applies and if the Comptroller of the Currency or the State supervisory authority so notified by the Board disapproves the application in writing within this period, the Board shall forthwith give written notice of that fact to the applicant. Within three days after giving such notice to the applicant, the Board shall notify in writing the applicant and the disapproving authority of the date for commencement of a hearing by it on such application. Any such hearing shall be commenced not less than ten nor more than thirty days after the Board has given written notice to the applicant of the action of the disapproving authority. The length of any such hearing shall be determined by the Board, but it shall afford all interested parties a reasonable opportunity to testify at such hearing. At the conclusion thereof, the

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Board shall, by order, grant or deny the application on the basis of the record made at such hearing. In the event of the failure of the Board to act on any application for approval under this section within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. Notwithstanding any other provision of the subsection, if the Board finds that it must act immediately on any application for approval under this section in order to prevent the probable failure of a bank or bank holding company involved in a proposed acquisition, merger, or consolidation transaction, the Board may dispose with the notice requirements of this subsection, and if notice is given, the Board may request that the views and recommendations of the Comptroller of the Currency or the State supervisory authority, as the case may be, be submitted immediately in any form or by any means acceptable to the Board. If the Board has found pursuant to this subsection either that an emergency exists requiring expeditious action or that it must act immediately to prevent probable failure, the Board may grant or deny any such application without a hearing notwithstanding any recommended disapproval by the appropriate supervisory authority.

(2) If the Board receives a certification described in section 13(f)(8)(D) of the Federal Deposit Insurance Act from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank.

(c) *Factors governing determination of application for approval.* The Board shall not approve—

(1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served. Notwithstanding any other provision of law, the Board shall not follow any practice or policy in the consideration of any application for the formation of a one-bank holding company if following such practice or policy would result in the rejection of such application solely because the transaction to form such one-bank holding company involves a bank stock loan which is for a period of not more than twenty-five years. The previous sentence shall not be construed to prohibit the Board from rejecting any application solely because the other financial arrangements are considered unsatisfactory. The Board shall consider transactions involving bank stock loans for the formation of a one-bank holding company having a maturity of twelve years or more on a case by case basis and no such transaction shall be approved if the Board believes the safety or soundness of the bank may be jeopardized.

(d) *Acquisitions in other states.* Notwithstanding any other provision of this section, no application (except an application filed as a result of a transaction authorized under section 13(f) of the Federal Deposit Insurance Act) shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any

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additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on the effective date of this amendment [July 1, 1966] or the date on which such company became a bank holding company, whichever is later, unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication. For the purposes of this section, the State in which the operations of a bank holding company's subsidiaries are principally conducted is that State in which total deposits of all such banking subsidiaries are largest.

(e) *Insured bank.* Every bank that is a holding company and every bank that is a subsidiary of such a company shall become and remain an insured bank as such term is defined in section 3(h) of the Federal Deposit Insurance Act. This subsection does not apply to a bank described in the last sentence of section 2(c).

(f) *Savings bank subsidiaries of bank holding companies.*

(1) Notwithstanding any other provision of this Act (other than paragraphs (2) and (3)), any qualified savings bank which is a subsidiary of a bank holding company may engage, directly or through a subsidiary, in any activity in which such savings bank may engage (as a State chartered savings bank) pursuant to express, incidental, or implied powers under any statute or regulation, or under any judicial interpretation of any law, of the State in which such savings bank is located.

(2) Except as provided in paragraph (3), any insurance activities of any qualified savings bank which is a subsidiary of a bank holding company shall be limited to insurance activities allowed under section 4(c)(8).

(3) Any qualified savings bank permitted, as of March 5, 1987, to engage in the sale or underwriting of savings bank life insurance may sell or underwrite such insurance after such savings bank is a subsidiary of a bank holding company if—

(A) the savings bank is located in the State of Connecticut, Massachusetts, or New York;

(B) such activity is expressly authorized by the law of the State in which such savings bank is located;

(C) the savings bank retains its character as a savings bank;

(D) such activity is carried out by the savings bank directly and not by—

(i) any subsidiary or affiliate of the savings bank; or

(ii) the bank holding company which controls such savings bank;

(E) such activity is carried out by the savings bank in accordance with any residency or employment limitations set forth in the savings bank life insurance statute in effect on March 5, 1987, in the State in which such bank is located; and

(F) such activity is otherwise carried out in the same manner as savings bank life insurance activity is carried out in the State in which such bank is located by savings banks which are not subsidiaries of any bank holding company registered under this Act.

(4) If any company which is not a savings bank or a savings bank holding company acquires control of a qualified savings bank, such savings bank shall cease to engage in any activity authorized under paragraph (1) or (3) before the end of the 2-year period beginning on the date such company acquires control, unless such activity is otherwise authorized pursuant to this Act.

(5) For the sole purpose of determining whether a qualified savings bank may continue to sell and underwrite savings bank life insurance in accordance with this subsection after control of such savings bank is acquired by a bank holding company, the assets of any other bank affiliated with, or under contract to affiliate with, such savings bank as of March 5, 1987, shall be treated as assets of the savings bank in determining whether such bank holding company is a savings bank holding company.

(g) *Mutual bank holding company.* (1) Notwithstanding any provision of Federal law other than this Act, a savings bank or

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cooperative bank operating in mutual form may reorganize so as to form a holding company.

(2) A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.

[12 USC 1842. As amended by acts of July 1, 1966 (80 Stat. 237); Dec. 31, 1970 (84 Stat. 1763); Nov. 16, 1977 (91 Stat. 1389); March 31, 1980 (94 Stat. 190); Oct. 15, 1982 (96 Stat. 1479, 1488, 1512); and Aug. 10, 1987 (101 Stat. 561, 579, 628, 635).]

SECTION 4—Interests in Nonbanking Organizations (12 USC 1843)

(a) *Ownership or control of any company not a bank; engagement in activities other than banking.* Except as otherwise provided in this Act, no bank holding company shall—

(1) after the date of enactment of this Act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

(2) after two years from the date as of which it becomes a bank holding company, or in the case of a company which has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act, after December 31, 1978, or in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this Act or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this section subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph: *Provided,* That a company covered in 1970 may also engage in those activities in which directly or through a subsidiary (i) it was lawfully engaged on June 30, 1968 (or on a date subsequent to June 30, 1968 in the case of activities carried on as the result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and (ii) it has been continuously engaged since June 30, 1968 (or such subsequent date). The Board by order, after opportunity for hearing, may terminate the authority conferred by the preceding proviso on any company to engage directly or through a subsidiary in an activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this Act, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a bank having bank assets in excess of $60,000,000 on or after the date of enactment of the Bank Holding Company Act Amendments of 1970 the Board shall determine, within two years after such date (or, if later, within two years after the date on which the bank assets first exceed $60,000,000), whether the authority conferred by the preceding proviso with respect to such company should be terminated as provided in this sentence. Nothing in this paragraph shall be construed to authorize any bank holding company referred to in the preceding proviso, or any subsidiary thereof, to engage in activities authorized by that proviso through the acquisition, pursuant to a contract entered into after June 30, 1968, of any interest in or the assets of a going concern engaged in such activities. Any company which is authorized to engage in any activity pursuant to the preceding proviso or subsection (d) of this section but, as a result of action of the Board, is required to terminate such activity may (notwithstanding any otherwise applicable time limit prescribed in this paragraph) retain the ownership or control of

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shares in any company carrying on such activity for a period of ten years from the date on which its authority was so terminated by the Board.

The Board is authorized, upon application by a bank holding company, to extend the two-year period referred to in paragraph (2) above from time to time as to such bank holding company for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall in the aggregate exceed three years. Notwithstanding any other provision of this Act, the period ending December 31, 1980, referred to in paragraph (2) above, may be extended by the Board of Governors to December 31, 1984, but only for the divestiture by a bank holding company of real estate or interests in real estate lawfully acquired for investment or development. In making its decision whether to grant such extension, the Board shall consider whether the company has made a good faith effort to divest such interests and whether such extension is necessary to avert substantial loss to the company. Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and the date of the enactment of such Amendments, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon the enactment of such Amendments, immediately come into compliance with the requirements of this Act.

(b) *Statement purporting to represent shares of any company except a bank or bank holding company.* After two years from the date of enactment of this Act, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be conditioned in any manner whatsoever upon the ownership, sale, or transfer of shares of any other company except a bank or a bank holding company.

(c) *Exemptions.* The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors: and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities; (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use: or (B) conducting a safe deposit business: or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries: or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previous contracted in good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall extend beyond a date five years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which

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subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraph (2) and (3) of section 2(g);

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, but for purposes of this subsection it is not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except (A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (B) in the case of a finance company which is a subsidiary of a bank holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extension of credit and, during the period beginning on the date of the enactment of this subparagraph and ending on December 31, 1982, such extension of credit is not more than $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (C) any insurance agency activity in a place that (i) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (ii) the bank holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (D) any insurance agency activity which was engaged in by the bank holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (i) sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the bank holding company is located, any State or States immediately adjacent to suchState, and any State or States in which insurance activities were conducted by the bank holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank holding company or any of its subsidiaries on or before May 1, 1982, and (ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of

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risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or any of its subsidiaries, and (ii) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (F) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of $50,000,000 or less: *Provided, however,* That such a bank holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or (G) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a bank holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a consequence of approval by the Board prior to January 1, 1971. In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In orders and regulations under this subsection, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern. Notwithstanding any other provision of this Act, if the Board finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such institution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing. If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

(11) shares owned directly or indirectly by a company covered in 1970 in a company which does not engage in any activities other than those in which the bank holding

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company, or its subsidiaries, may engage by virtue of this section, but nothing in this paragraph authorizes any bank holding company, or subsidiary thereof, to acquire any interest in or the assets of any going concern (except pursuant to a binding written contract entered into before June 30, 1968, or pursuant to another provision of this Act) other than one which was a subsidiary on June 30, 1968;

(12) shares retained or acquired, or activities engaged in, by any company which be comes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, or by any subsidiary thereof, if such company—

(A) within the applicable time limits prescribed in subsection (a)(2) of this section (i) ceases to be a bank holding company, or (ii) ceases to retain direct or indirect ownership or control of those shares and to engage in those activities not authorized under this section; and

(B) complies with such other conditions as the Board may by regulation or order prescribe;

(13) shares of, or activities conducted by, any company which does no business in the United States except as an incident to its international or foreign business, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this Act and would be in the public interest; or

(14) shares of any company which is an export trading company whose acquisition (including each acquisition of shares) or formation by a bank holding company has not been disapproved by the Board pursuant to this paragraph, except that such investments, whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such period has not issued a notice disapproving the proposed investment or extending for up to another thirty days the period during which such disapproval may be issued.

(ii) The period for disapproval may be extended for such additional thirty-day period only if the Board determines that a bank holding company proposing to invest in an export trading company has not furnished all the information required to be submitted or that in the Board's judgment any material information submitted is substantially inaccurate.

(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(iv) The Board may disapprove any proposed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

(II) the Board finds that such investment would affect the financial or managerial resources of a bank holding company to an extent which is likely to have a materially adverse effect on the safety and soundness of any subsidiary bank of such bank holding company, or

(III) the bank hoding company fails to furnish the information required under clause (iii).

(v) Within three days after a decision to disapprove an investment, the Board shall notify the bank holding company in writing of the disapproval and shall provide a written statement of the basis for the disapproval.

(vi) A proposed investment may be made prior to the expiration of the disapproval period if the Board issues written notice of its intent not to disapprove the investment.

(B)(i) The total amount of extensions

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of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit by all the subsidiaries of such bank holding company, to an export trading company shall not exceed at any one time 10 per centum of the bank holding company's consolidated capital and surplus. For purposes of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of credit.

(iii) No bank holding company or subsidiary of such company which invests in an export trading company may extend credit to such export trading company or to customers of such export trading company on terms more favorable than those afforded similar borrowers in similar circumstances, and such extension of credit shall not involve more than the normal risk of repayment or present other unfavorable features.

(C) For purposes of this paragraph, an export trading company—

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

(ii) may not engage in agricultural production activities or in manufacturing, except for such incidental product modification including repackaging, reassembling or extracting byproducts, as is necessary to enable United States goods or services to conform with requirements of a foreign country and to facilitate their sale in foreign countries.

(D) A bank holding company which invests in an export trading company may be required, by the Board, to terminate its investment or may be made subject to such limitations or conditions as may be imposed by the Board, if the Board determines that the export trading company has taken positions in commodities or commodity contracts, in securities, or in foreign exchange, other than as may be necessary in the course of the export trading company's business operations.

(E) Notwithstanding any other provision of law, an Edge Act corporation, organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611–631), which is a subsidiary of a bank holding company, or an agreement corporation, operating subject to section 25 of the Federal Reserve Act (12 U.S.C. 601–604(a)), which is a subsidiary of a bank holding company, may invest directly and indirectly in the aggregate up to 5 per centum of its consolidated capital and surplus (25 per centum in the case of a corporation not engaged in banking) in the voting stock or other evidences of ownership in one or more export trading companies.

(F) For purposes of this paragraph—

(i) the term "export trading company" means a company which does business under the laws of the United States or any State, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services.

(ii) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance (other than acting as principal, agent or broker in the sale of insurance on risks resident or located, or activities performed, in the United States, except for insurance covering the transportation of cargo from any point of origin

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in the United States to a point of final destination outside the United States), product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(iii) the term "bank holding company" shall include a bank which (I) is organized solely to do business with other banks and their officers, directors, or employees; (II) is owned primarily by the banks with which it does business; and (III) does not do business with the general public. No such other bank, owning stock in a bank described in this clause that invests in an export trading company, shall extend credit to an export trading company in an amount exceeding at any one time 10 per centum of such other bank's capital and surplus; and

(iv) the term "extension of credit" shall have the same meaning given such term in the fourth paragraph of section 23A of the Federal Reserve Act.

In the event of the failure of the Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted. The Board shall include in its annual report to the Congress a description and a statement of the reasons for approval of each activity approved by it by order or regulation under such paragraph during the period covered by the report.

(d) *Hardship exemption of company controlling one bank prior to July 1, 1968.* To the extent that such action would not be substantially at variance with the purposes of this Act and subject to such conditions as it considers necessary to protect the public interest, the Board by order, after opportunity for hearing, may grant exemptions from the provisions of this section to any bank holding company which controlled one bank prior to July 1, 1968, and has not thereafter acquired the control of any other bank in order (1) to avoid disrupting business relationships that have existed over a long period of years without adversely affecting the banks or communities involved, or (2) to avoid forced sales of small locally owned banks to purchasers not similarly representative of community interests, or (3) to allow retention of banks that are so small in relation to the holding company's total interests and so small in relation to the banking market to be served as to minimize the likelihood that the bank's powers to grant or deny credit may be influenced by a desire to further the holding company's other interests.

(e) *Divestiture of nonexempt shares.* With respect to shares which were not subject to the prohibitions of this section as originally enacted by reason of any exemption with respect thereto but which were made subject to such prohibitions by the subsequent repeal of such exemption, no bank holding company shall retain direct or indirect ownership or control of such shares after five years from the date of the repeal of such exemption, except as provided in paragraph (2) of subsection (a). Any bank holding company subject to such five-year limitation on the retention of nonbanking assets shall endeavor to divest itself of such shares promptly and such bank holding company shall report its progress in such divestiture to the Board two years after repeal of the exemption applicable to it and annually thereafter.

(f) *Certain companies not treated as bank holding companies.* (1) Except as provided in paragraph (9), any company which—

(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

(B) was not a bank holding company on the day before the date of the enactment of the Competitive Equality Amendments of 1987,

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shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company's control of such institution.

(2) Paragraph (1) shall cease to apply to any company described in such paragraph if—

(A) such company directly or indirectly—

(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) of this subsection) after March 5, 1987; or

(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or an insured institution other than—

(I) shares acquired in a bona fide fiduciary capacity;

(II) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(III) shares held in an account solely for trading purposes;

(IV) loans or other accounts receivable acquired in the normal course of business; and

(V) shares or assets of an insured institution described in paragraph (10) of this subsection; or

(B) any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).

(3)(A) The Congress finds that banks controlled by companies referred to in paragraph (1) may, because of relationships with affiliates, be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and may also be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. The purpose of this paragraph is to minimize any such potential adverse effects or inequities by temporarily restricting the activities of banks controlled by companies referred to in paragraph (1) until such time as the Congress has enacted proposals to allow, with appropriate safeguards, all banks or bank holding companies to compete on a more equal basis with banks controlled by companies referred to in paragraph (1) or, alternatively, proposals to permanently restrict the activities of banks controlled by companies referred to in paragraph (1).

(B) Until such time as the Congress has taken action pursuant to subparagraph (A), a bank controlled by a company described in paragraph (1) shall not—

(i) engage in any activity in which such bank was not lawfully engaged as of March 5, 1987;

(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8), or permit its products or services to be offered or marketed by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under subsection (c)(8)), unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date;

(iii) after the date of the enactment of the Competitive Equality Amendments of 1987, permit any overdraft (including an intraday overdraft), or incur any such overdraft in such bank's account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft described in subparagraph (C); or

(iv) increase its assets at an annual rate of more than 7 percent during any 12-month period beginning after the end of the 1-year period beginning on the date of the enactment of the Competitive Equality Amendments of 1987.

(C) For purposes of subparagraph (B)(iii), an overdraft is described in this subparagraph if—

(i) such overdraft results from an inadvertent computer or accounting er-

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ror that is beyond the control of both the bank and the affiliate; or

(ii) such overdraft—

(I) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

(II) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

(4) If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.

(5) This subsection shall cease to apply to any company described in paragraph (1) if such company—

(A) registers as a bank holding company under section 5(a) of this Act;

(B) immediately upon such registration, complies with all of the requirements of this Act, and regulations prescribed by the Board pursuant to this Act, including the nonbanking restrictions of this section; and

(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

(6) Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Competitive Equality Amendments of 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

(7) The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

(8)(A) *In general.* In addition to any other power of the Board, the Board may enforce compliance with the provisions of this Act which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

(B) Any violation of this Act by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

(C) No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

(9) A company described in paragraph (1) shall be—

(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

(10) For purposes of clauses (i) and (ii)(V) of paragraph (2)(A), an insured institution is described in this paragraph if—

(A) the insured institution was acquired (or any shares or assets of such institu-

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tion were acquired) by a company described in paragraph (1) in an acquisition under section 408(m) of the National Housing Act; and

(B) either—

(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

(ii) the insured institution has total assets of $500,000,000 or more at the time of such acquisition.

(g) *Limitations on certain banks.* (1) Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

(A) engage in any activity after the date of the enactment of such Amendments which would have caused such institution to be a bank (as defined in section 2(c), as in effect before such date) if such activities had been engaged in before such date; or

(B) increase the number of locations from which such institution conducts business after March 5, 1987.

(2) The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 3(d) of this Act if—

(A) an application for such acquisition were filed under section 3(a) of this Act; and

(B) such bank were treated as an additional bank (under section 3(d)).

(h) *Tying provisions.* (1) An institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) shall be treated as a bank, and a company that controls such an institution shall be treated as a bank holding company, for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.

(2) A company that controls an institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) and any of such company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.

[12 USC 1843. As amended by acts of July 1, 1966 (80 Stat. 238); Dec. 31, 1970 (84 Stat. 1763); Nov. 16, 1977 (91 Stat. 1389); Nov. 10, 1978 (92 Stat. 3671); March 31, 1980 (94 Stat. 186); Oct. 8, 1982 (96 Stat. 1236); Oct. 15, 1982 (96 Stat. 1479, 1488, 1527, 1536); Jan. 12, 1983 (96 Stat. 2511); Aug. 10, 1987 (101 Stat. 557, 628); and Aug. 23, 1988 (102 Stat. 1384, 1385).]

SECTION 5—Administration (12 USC 1844)

(a) *Registration of bank holding company.* Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this Act. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information.

(b) *Regulations and orders.* The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof.

(c) *Reports required by Board; examinations; cost of examination.* The Board from time to time may require reports under oath to keep it

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informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board shall, as far as possible, use the reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section.

(d) *Reports to Congress; recommendations.* Before the expiration of two years following the date of enactment of this Act, and each year thereafter in the Board's annual report to the Congress, the Board shall report to the Congress the results of the administration of this Act, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this Act, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e) *Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk.* (1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 9 of this Act, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) *Powers of Board respecting applications, examinations, or other proceedings.* In the course of or in connection with an application, examination, investigation or other proceeding under this Act, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum: and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this Act may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any terri-

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tory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it seems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or, to imprisonment for a term of not more than one year or both.

[12 USC 1844. As amended by act of Nov. 10, 1978 (92 Stat. 3646).]

SECTION 6

[Section 6 was repealed by section 9 of the act of July 1, 1966 (80 Stat. 240).]

SECTION 7—Reservation of Rights to States (12 USC 1846)

No provision of this act shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.

[12 USC 1846. As amended by act of Aug. 10, 1987 (101 Stat. 563).]

SECTION 8—Penalties (12 USC 1847)

(a) Any company which willfully violates any provision of this Act, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than $1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Act shall upon conviction be fined not more than $10,000 or imprisoned not more than one year, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

(b) (1) Any company which violates or any individual who participates in a violation of any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty may be assessed and collected by the Board by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation: *Provided,* That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this section.

(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In

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such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in section 9. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.

[12 USC 1847. As amended by acts of Nov. 10, 1978 (92 Stat. 3647) and Oct. 15, 1982 (96 Stat. 1522).]

SECTION 9—Judicial Review (12 USC 1848)

Any party aggrieved by an order of the Board under this Act may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business, or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

[12 USC 1848. As amended by acts of Aug. 28, 1958 (72 Stat. 951) and July 1, 1966 (80 Stat. 240).]

SECTION 10—Tax Provisions (12 USC 1841)

[Subsections (a) and (b) contain language added to subchapter O of chapter 1 of the Internal Revenue Code of 1954 (26 USC). This language was subsequently incorporated in the Bank Holding Company Tax Act of 1976, along with additional language also amending the Internal Revenue Code.]

(c) The amendments made by this section shall apply with respect to taxable years ending after the date of the enactment of this Act.

SECTION 11—Saving Provision (12 USC 1849)

(a) *General rule.* Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

(b) *Antitrust review.* (1) The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any cash transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be

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consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act. 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period of no such litigation is commenced therein, the transaction may not thereafter be attached in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

(2)(A) If—

(i) the Federal Deposit Insurance Corporation learns that a bank insured by such Corporation is in danger of closing; and

(ii) the Corporation is considering assisting the acquisition of such bank and its affiliated banks by another bank or holding company under section 13(f) of the Federal Deposit Insurance Act and such acquisition is subject to the approval of the Board under section 3 of this Act,

the Corporation shall immediately notify the Board of such facts.

(B) Upon receipt of notice from the Federal Deposit Insurance Corporation under subparagraph (A) or at such earlier time as deemed appropriate by the Board, the Board shall immediately notify the Attorney General of the United States of the facts concerning the possible acquisition.

(C) Within 5 days of receiving notice under subparagraph (B), the Attorney General shall notify the Board in writing of the Attorney General's preliminary finding as to the consistency of the possible acquisition with the antitrust laws.

(D) The Board may reduce or eliminate the post-approval waiting period established under paragraph (1) for an acquisition to which this paragraph applies, except that such period may not be eliminated or reduced to less than 5 days without the concurrence of the Attorney General.

(c) *Antitrust proceedings; Board and State banking agency as party; representation by counsel.* In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 3 of this Act, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

(d) *Treatment of merger transactions consummated prior or subsequent to May 9, 1956, and not in litigation prior to July 1, 1966.* Any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this amendment, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of the Act of July 2,

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1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

(e) *Antitrust litigation; substantive law applicable to proceedings pending on or after July 1, 1966 with respect to merger transactions.* Any court having pending before it on or after the date of enactment of this amendment any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 3(a) of this Act shall apply the substantive rule of law set forth in section 3 of this Act.

(f) *Definition of "antitrust laws".* For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.

[12 USC 1849. As amended by acts of July 1, 1966 (80 Stat. 240) and Dec. 31, 1970 (84 Stat. 1766) Oct. 2, 1976 (90 Stat. 1503); Nov. 16, 1977 (91 Stat. 1390); and Aug. 10, 1987 (101 Stat. 628). The date of the amendment referred to in paragraphs (d) and (e) is July 1, 1966.]

SECTION 12—Separability of Provisions (12 USC 1841 note)

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

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Bank Holding Company Act Amendments of 1970

12 USC 1850, 1971 et seq.; 84 Stat. 1766; Pub. L. 91-607 (December 31, 1970)

SECTION 105—Party in Interest

With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 3 of the Bank Holding Company Act of 1956, to engage directly or indirectly in a nonbanking activity pursuant to section 4 of such Act, or to engage in an activity otherwise prohibited under section 106 of this Act, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 9 of such Act of 1956 or as otherwise provided by law.

[12 USC 1850.]

SECTION 106—Definitions

(a) As used in this section, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 2 of the Bank Holding Company Act of 1956. For purposes of this section only, the term "company", as used in section 2 of the Bank Holding Company Act of 1956, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department.

[12 USC 1971.]

(b) *Certain tie-in arrangements; prohibition; exceptions.* (1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition as it considers will not be contrary to the purposes of this section.

(2) (A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the

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normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other persons who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account, or to any related interest of such person, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another Bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank, or to any related interest of such person shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term "extension of credit" shall have the meaning prescribed by the Board pursuant to section 22(h) of the Federal Reserve Act (12 USC 375b), and the term "executive officer" shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

(F) (i) Any bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates any provision of section 106(b)(2) shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided,* That the agency having authority to impose a civil money penalty may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, or the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counselling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous viola-

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tions, and such other matters as justice may require.

(iii) The bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subsection (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days from the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be. The Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706 (2) (E) of title 5, United States Code.

(v) If any bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) The Comptroller of the Currency, the Board and the Federal Deposit Insurance Corporation shall promulgate regulations establishing procedures necessary to implement this section.

(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(G) (i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintains a corresponding account in the name of such bank. Such report shall include the following information:

(*1*) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer of stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

(*2*) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stock-

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holder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

(*3*) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

(*4*) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.

(H) For the purpose of this paragraph—

(i) the term "bank" includes a mutual savings bank;

(ii) the term "related interests of such persons" includes any company controlled by such executive officer, director, or person, or any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person; and

(iii) the terms "control of a company" and "company" have the same meaning as under section 22 (h) of the Federal Reserve Act (12 USC 375b).

[12 USC 1972. As amended by acts of Nov. 10, 1978 (92 Stat. 3690) and Oct. 15, 1982 (96 Stat. 1520, 1523, 1526).]

(c) *Jurisdiction of courts; duty of U.S. attorneys; equitable proceedings; petition; expedition of cases; temporary restraining orders; bringing in additional parties; subpoenas.* The district courts of the United States have jurisdiction to prevent and restrain violations of subsection (b) of this section and it is the duty of the United States attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. The proceedings may be by way of a petition setting forth the case and praying that the violation be enjoined or otherwise prohibited. When the parties complained of have been duly notified of the petition, the court shall proceed, as soon as possible, to the hearing and determination of the case. While the petition is pending, and before final decree, the court may at any time make such temporary restraining order or prohibition as it deems just. Whenever it appears to the court that the ends of justice require that other parties be brought before it, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and subpoenas to that end may be served in any district by the marshal thereof.

[12 USC 1973.]

(d) *Actions by United States; subpoenas for witnesses.* In any action brought by or on behalf of the United States under subsection (b), subpoenas for witnesses may run into any district, but no writ of subpoena may issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the prior permission of the trial court upon proper application and cause shown.

[12 USC 1974.]

(e) *Civil actions by persons injured; jurisdiction and venue; amount of recovery.* Any person who is injured in his business or property by reason of anything forbidden in subsection (b) may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover three times the amount of the damages sustained by him and the cost of suit, including a reasonable attorney's fee.

[12 USC 1975.]

(f) *Injunctive relief of persons against threatened loss or damages; equitable proceedings; preliminary injunctions.* Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the

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parties, against threatened loss or damage by reason of a violation of subsection (b), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

[12 USC 1976.]

(g) *Limitation of actions; suspension of limitations.* (1) Subject to paragraph (2), any action to enforce any cause of action under this section shall be forever barred unless commenced within four years after the cause of action accrued.

(2) Whenever any enforcement action is instituted by or on behalf of the United States with respect to any matter which is or could be the subject of a private right of action under this section, the running of the statute of limitations in respect of every private right of action arising under this section and based in whole or in part on such matter shall be suspended during the pendency of the enforcement action so instituted and for one year thereafter: *Provided,* That whenever the running of the statute of limitations in respect of a cause of action arising under this section is suspended under this paragraph, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within the four-year period referred to in paragraph (1).

[12 USC 1977.]

(h) *Actions under other Federal or State laws unaffected; regulations or orders barred as a defense.* Nothing contained in this section shall be construed as affecting in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this section. No regulation or order issued by the Board under this section shall in any manner constitute a defense to such action.

[12 USC 1978.]

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Change in Bank Control Act

12 USC 1817(j); 92 Stat. 3683; Pub. L. 95–630, Financial Institutions Regulatory and Interest Rate Control Act, Title VI (November 10, 1978)

FIRA, TITLE VI—CHANGE IN BANK CONTROL

SECTION 601

This title may be cited as the "Change in Bank Control Act of 1978".

[12 USC 1817 note.]

SECTION 602

Subsection (j) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817 (j)) is amended to read as follows:

"(j)(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured bank through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured bank unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or, in the discretion of the agency, extending for an additional 30 days the period during which such a disapproval may issue. The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the agency's judgment, any material information submitted is substantially inaccurate;

(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.

An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action. For purposes of this subsection (j), the term 'insured bank' shall include any 'bank holding company', as that term is defined in section 2 of the Bank Holding Company Act, which has control of any such insured bank, and the appropriate Federal banking agency in the case of bank holding companies shall be the Board of Governors of the Federal Reserve System.

(2)(A) Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State bank supervisory agency if the bank the voting shares of which are sought to be acquired is a State bank, and shall allow thirty days within which the views and recommendations of such State bank supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this section (j)(2), if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable failure of the bank involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this subsection (j)(2) or, if a copy of the notice is forwarded to the State bank supervisory agency, such Federal banking agency may request that the views and recommendations of such State bank supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(B) Upon receiving any notice under

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this subsection, the appropriate Federal banking agency shall—

(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.

(D) Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, within a reasonable period of time—

(i) publish the name of the insured bank proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency, unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.

(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearing under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted ac-

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counting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank; or

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency.

(8) For the purposes of this subsection, the term—

(A) 'person' means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) 'control' means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 per centum or more of any class of voting securities of an insured bank.

(9) Whenever any insured bank makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured bank, the president or other chief executive officer of the lending bank shall promptly report such

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fact to the appropriate Federal banking agency of the bank whose stock secures the loan or loans upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of the newly organized bank prior to its opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular report.

(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

(12) Whenever such a change in control occurs, each insured bank shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(13) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection.

(14) Within two years after the effective date of the Change in Bank Control Act of 1978, and each year thereafter in each appropriate Federal banking agency's annual report to the Congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal agency would be desirable.

(15)(A) The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

(B) Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

(C)(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.

(16) Any person who willfully violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The appropriate Federal banking agency shall have

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authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.

(17) This subsection shall not apply to a transaction subject to section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) or section 18 of this Act (12 U.S.C. 1828). This subsection shall not apply to an insured savings bank."

[12 USC 1817(j). As added by act of Sept. 12, 1964 (78 Stat. 940) and amended by acts of Oct. 16, 1966 (80 Stat. 1046); Sept. 17, 1978 (92 Stat. 617); Nov. 10, 1978 (92 Stat. 3683); Oct. 15, 1982 (96 Stat. 1475); and Oct. 27, 1986 (100 Stat. 3207-29).]

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Board of Governors of the Federal Reserve System

TRUTH IN LENDING

AMENDMENTS TO REGULATION Z

(effective June 7, 1989)

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0655]

RIN: 7100-AA91

Truth in Lending; Home Equity Disclosure and Substantive Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation Z (Truth in Lending) to implement the Home Equity Loan Consumer Protection Act of 1988. The law requires creditors to provide consumers with extensive information for open-end credit plans secured by the consumer's dwelling, and imposes substantive limitations on these plans. Creditors will have to provide information at the time an application is provided to the consumer, including information about the payment terms, fees imposed under the plan, and, for variable-rate plans, information about the index and a fifteen-year history of changes in the index values. Creditors will be required to provide consumers with a brochure prepared by the Board (or a suitable substitute) describing home equity plans. The regulation also imposes duties on third parties who provide applications to consumers and modifies the rules relating to advertisements for home equity plans.

In addition to these disclosure requirements, the regulation limits a creditor's right to terminate a plan and accelerate any outstanding balance, or to change the terms of a plan after it has been opened, and limits the type of index that can be used for variable-rate plans.

EFFECTIVE DATE: June 7, 1989, but compliance is optional until November 7, 1989.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Leonard Chanin or Thomas Noto, Staff Attorneys, or Michael Bylsma, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

In December 1987 the Board proposed amendments to Regulation Z to change the existing disclosure requirements for home equity lines of credit secured by the consumer's principal dwelling (52 FR 48702). Subsequently, the Home Equity Loan Consumer Protection Act was enacted on November 23, 1988 (Pub. L. 100-709). The law superseded the Board's proposal.

The statute and amendments to the regulation leave in place existing disclosure requirements for open-end plans. They add, however, two requirements to this framework. First, as is the case for certain closed-end adjustable-rate mortgages (see § 226.19(b) of Regulation Z), creditors generally will be required to provide detailed disclosures about their home equity plans when an application is provided to the consumer. Second, creditors will be required to provide additional information, along with the current disclosures, prior to the first transaction under the plan. In addition to these disclosures the statute and regulation place certain substantive

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For this Regulation to be complete, retain:
1) Regulation Z pamphlet, revised April 1, 1981.
2) Amendments effective December 3, 1981, April 1, 1982, October 1, 1982, December 31, 1984, April 4, 1985, and December 16, 1986 (*printed in slip sheet dated April 1987; also includes amendments to the Truth in Lending Act*).
3) Amendments effective December 9, 1987, December 28, 1987, and April 3, 1989.
4) Correction, effective December 28, 1987.
5) Official Staff Commentary on Regulation Z, effective April 1, 1988.
6) Amendments to the Official Staff Commentary, effective February 28, 1989.
7) This slip sheet.

[Enc. Cir. No. 10300]

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limitations on home equity plans.

On January 23, 1989, the Board published a proposed rule to amend Regulation Z to implement the statute. (54 FR 3063). The Board received approximately 150 comments on the proposal. A number of commenters expressed concern about the new law, and in particular about the substantive requirements. They felt, however, that the Board had provided a workable framework to provide guidance to creditors. Many commenters recognized that the statute provided the Board with little flexibility in implementing the act, but requested further guidance on various issues.

Based on a review of the comments and further analysis, the Board is adopting a final rule implementing the act. The statute provides that creditors must comply with the law five months after enactment of final regulations by the Board. Therefore, compliance is mandatory as of November 7, 1989. Creditors are free to comply with the new requirements prior to that date.

(2) Amendments To Regulation Z

The Home Equity Loan Consumer Protection Act is quite detailed and, for the most part, the regulatory amendments mirror the statutory requirements. The amendments to Regulation Z incorporate the disclosure provisions into a new § 226.5b of the regulation and into existing § 226.6. (A new § 226.5a was added to Regulation Z by the Board on April 6, 1989, to implement the Fair Credit and Charge Card Disclosure Act. See 54 FR 13855. The changes now being made amend the regulation as it has been modified by the amendments implemented under the Fair Credit and Charge Card Disclosure Act.) Modifications are made to the form and timing rules in § 226.5, the change in terms rules in § 226.9, the rescission provisions in section 226.15, and the advertising rules contained in § 226.16. Technical amendments also are made to §§ 226.1, 226.5a, and 226.14.

This notice contains a detailed section-by-section discussion of the new rules and provides guidance on a large number of technical questions raised by the commenters. In general, the amendments apply to open-end credit lines secured by the consumer's dwelling (not limited to the principal dwelling).

The new rules require that creditors provide disclosures and a brochure at the time an application for such a line of credit is given to the consumer, although extra time is permitted in certain cases, such as where applications are made on the telephone or through intermediaries. The disclosures generally have to be grouped together and separated from any unrelated information. Among other things, creditors must describe the payment terms of the plan, including how the minimum payment is determined. The disclosures cover both the draw period and any repayment period, although some information about the repayment period may be delayed until repayment begins. Creditors must itemize and provide the amount of any fees they impose to open or use the plan, and an estimate of fees imposed by third parties to open the plan.

Detailed information about any variable-rate feature will be provided by creditors. This includes the index used to determine the rate adjustments, the frequency of changes in the annual percentage rate (APR), and a fifteen-year historical table showing how the APRs and payments would have been affected by index value changes over that time.

In addition to these early disclosures, the regulation requires that certain information (such as payment information) be given a second time along with the disclosures currently required when open-end credit accounts are opened. The regulation specifies which disclosures must be given a second time.

Though the regulation principally deals with creditors, third parties have a limited duty to provide information if they provide applications to consumers. The advertising rules also are modified. For example, if an advertisement states any payment information it must include other cost information.

In addition to disclosures, the regulation contains substantive limitations on the way home equity plans may be structured. The regulation limits the ability of a creditor to terminate a plan and accelerate any outstanding balance, or to change the terms of a plan after it has been opened. The regulation also limits the type of index a creditor can use for variable-rate plans.

Renewals and "conversions" of home equity lines raise a number of issues. Guidance on how these should be handled appears later in this notice, as well as how the effective date of the new rules will affect applications and new plans being offered on that date. Much of the information in this notice will be incorporated into the annual update to the Official Staff Commentary on Regulation Z that will be proposed for comment in the fall. Furthermore, a number of cross-references and modifications will be added to existing commentary provisions when the Official Staff Commentary is proposed. For example, comment 6(a)(2)–2 (dealing with the ability of a creditor to increase a rate without reference to an index) and comment 17(b)–2 (dealing with conversion of open-end credit to closed-end credit) will be modified to reflect the new home equity rules.

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

The amendments to § 226.1 are largely unchanged from the proposal, except that they add a reference to the credit and charge card rules adopted by the Board in April 1989. The amendments to § 226.1(b) reference the fact that variable-rate contracts secured by the consumer's dwelling must state a maximum interest rate. (This requirement was added to § 226.30 of the regulation in November 1987.) This section also references the limitations imposed on home equity plans. The addition of § 226.1(c) reflects the fact that certain requirements of the home equity rules apply to persons other than creditors who provide applications to consumers. The amendments to § 226.1(d) add a reference to the new home equity rules, and amendments made to implement the Fair Credit and Charge Card Disclosure Act (added to the regulation in April 1989).

Section 226.5—General Disclosure Requirements

Footnote 8 accompanying § 226.5(a) is amended to reflect the fact that the disclosures required at the time of application need not be in a form that the consumer can keep. The existing rule in § 226.5(a)(2) also applies to the early disclosure statement. Thus, when the term "annual percentage rate" is disclosed with a number, it must be more conspicuous than other required disclosures. A new paragraph (4) is added to § 226.5(a) to reflect the fact that § 226.5b disclosures have their own form rules. A new paragraph (4) is added to § 226.5(b) to reflect the fact that § 226.5b disclosures have their own timing rules.

Section 226.5a—Credit and Charge Card Applications and Solicitations

Section 226.5a(a)(3) is modified to substitute the new regulatory citation of the home equity rules for the statutory citation in § 226.5a. (Section 226.5a—

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dealing with credit and charge card applications and solicitations—does not apply to home equity plans accessible by a credit or charge card.)

Section 226.5b—Requirements for Home Equity Plans

Section 226.5b provides that the amendments to Regulation Z apply to all open-end credit plans secured by the consumer's dwelling. Several commenters asked whether the home equity rules apply only where the consumer's principal dwelling is involved. While the statute uses the term "principal dwelling," it is specifically defined to include any vacation or second home of the consumer. The Board is using the term "dwelling" since it has an established meaning under Regulation Z. The final rules apply to all dwellings, a term defined in § 226.2(a)(19) of the regulation to include residential structures containing one to four units. Thus, the new rules are not limited to plans secured by the consumer's primary dwelling. The regulation does not set out special owner-occupancy rules. However, the existing commentary to § 226.3(a) (which discusses whether transactions are consumer or business purpose credit in part based on owner-occupancy criteria) provides guidance on whether a home equity plan is subject to Regulation Z at all.

The fact that coverage of these rules is broader than just principal dwelling does not affect the scope of any other provisions of the regulation. Thus, for example, the right of rescission applies only in cases where the consumer's principal dwelling secures the credit.

The APR referred to throughout new § 226.5b is the APR corresponding to the periodic rate, as determined by § 226.14(b). Since a number of commenters were concerned that the statement to that effect in footnote 10c in the proposal was ambiguous, the provision now appears in the introduction to the section.

Conversion Rules

A number of commenters requested guidance on what disclosures are required if the initial agreement calls for the draw phase of a plan to "convert" to a repayment phase, which has many aspects of closed-end credit. Some home equity plans provide in the initial agreement for a period during which repayment of the amount borrowed is made, but no further draws may be taken. In such cases, the disclosures must include information about both phases of the plan. All of the disclosures in § 226.5b, as applicable, must be given for the repayment phase. Thus, for example, creditors must provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(d)(5). The information set out in § 226.5b(d)(7), § 226.5b(d)(9) and, if the rate during repayment will be variable, in § 226.5b(d)(12) also must be given for the repayment phase. If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an APR under § 226.5b(d)(6) with regard to that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion—even if the rate during the repayment phase will be fixed—creditors must provide the information in § 226.5b(d)(12), as applicable.

Although full disclosure of the terms about the repayment phase is required, creditors have a choice with regard to when it must be given. Creditors may provide all of this information at the time the other early disclosures are given to the consumer, in accordance with § 226.5b. As an alternative, creditors need disclose only the basic payment terms information under § 226.5b(d)(5)(i) and (ii) with the early disclosures, and defer all the other required disclosures about the repayment phase until conversion. If provided at conversion, disclosures must be based on information available at that later time. For example, the historical table as discussed under § 226.5b(d)(12)(xi) must reflect the index for the most recent fifteen years. Sample form G–14C has been added to the appendix to the regulation to illustrate how this later disclosure might look. Creditors using either of these alternative disclosure rules are required to provide information about the repayment phase as set forth in § 226.6 (See the discussion of this requirement under that section.)

Creditors providing these disclosures, whether early or at conversion, are not required to provide any additional disclosures under the rules in Subpart C of the regulation for closed-end credit. The existing rules (such as those in comments 17(b)–2 and 19(b)–2 of the Official Staff Commentary, which discuss converting an open-end account to a closed-end one) do not apply to home equity plans in which a repayment phase is provided for in the original agreement. The Congress, in the act, requires disclosures about the closed-end aspects of a home equity line to be given as part of the home equity "plan." The Board believes the Congress intended to provide special treatment for this product. Consistent with this approach of treating both phases as a single open-end credit plan, during the repayment phase creditors are required to continue providing periodic statements under § 226.7 and to comply with other open-end credit rules set forth in Subpart B of the regulation, as well as the substantive rules set forth in § 226.5b(f). For example, if the original agreement provides for a repayment phase with a variable-rate feature, rate changes must be tied to an index not within the control of the creditor, as discussed in § 226.5b(f)(1).

If the original home equity line agreement does not call for a repayment phase to follow the draw period, and the creditor and consumer later enter into a closed-end credit agreement to repay the outstanding balance, the creditor must give closed-end credit disclosures (including those under § 226.19(b) and 226.20(c), if applicable) since this would be deemed a new transaction. In such cases, the substantive rules in § 226.5b(f) do not apply to the closed-end credit transaction.

Section 226.5b(a)—Form of Disclosures

Unlike existing Truth in Lending requirements for closed-end and open-end credit, the disclosures provided at the time of application need not be in a form the consumer can keep. Thus, although the disclosures must be in writing, creditors are permitted to place the first set of disclosures on the application form the consumer returns to the creditor to apply for the plan. Although several commenters questioned this rule, the act and legislative history make it clear that creditors are not required to provide this information in a form the consumer can keep. (The disclosures provided under § 226.6(e) of the regulation, however, must be in a form the consumer can keep. See also the discussion under § 226.6(e) for special rules when the early disclosures are given in a retainable form.)

Section 226.5b(a) requires most of the disclosures to be grouped together and "segregated" from unrelated information provided to the consumer in connection with the application. The brochure and the variable rate information described in § 226.5b(d)(12) may be provided either separately from or with the other disclosures. Creditors choosing to provide a description of the items referred to in § 226.5b(d)(4)(iii)—for example, the conditions under which the creditor may prohibit additional

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extensions of credit—may give this information separately from or with the other disclosures. Similarly, creditors choosing to provide a good faith itemization of fees imposed by third parties—as set forth under § 226.5b(d)(8)—also may give those disclosures separately from or with the other disclosures. (The disclosures required under these sections are set forth in greater detail under the specific sections.)

Under the regulation, greater flexibility is permitted in complying with the segregation standard than currently exists for closed-end credit. Disclosures for home equity plans tend to be less concise and more narrative in form than those for closed-end credit. Therefore, the regulation applies a more liberal standard that permits inclusion of information that explains or expands on the required disclosures. Information on other aspects of the plan that is not related to the required disclosures, such as underwriting criteria, however, is not permitted to be interspersed with the disclosures. Such information, of course, could be provided as long as it is separate from the required disclosures. The segregation requirement does not apply to the second set of disclosures, which are provided under § 226.6 prior to the first transaction.

In the first set of disclosures, that is, those given at application, § 226.5b(a)(2) of the regulation provides that certain items will be further highlighted by requiring them to precede the other disclosures. Consumers will be notified, for example, that: (1) They should keep a copy of the disclosures; (2) they have a right to obtain a refund of fees if terms change and they decide not to enter into the contract as a result; (3) they risk the loss of the dwelling in the event of default; and (4) a creditor may terminate a plan or suspend future advances under certain circumstances. With regard to the last item, if a creditor describes these conditions, the precedence rule does not apply to that descriptive disclosure. The precedence rule does not apply to the second set of disclosures at all.

If creditors give a single disclosure form covering all of their home equity offerings, all aspects of their plans must be described in the first set of disclosures. For example, if a creditor offers several payment options, all options have to be set forth. Furthermore, if any aspects of a plan are linked together—for example, if the consumer can obtain certain payment options only in conjunction with other plan features, such as a particular variable-rate feature—the creditor must clearly disclose the relation among those plan features. Creditors need not, however, reflect all payment options in providing the minimum payment example under § 226.5b(d)(5)(iii), the "worst case" example under § 226.5b(d)(12)(x), and the historical table under § 226.5b(d)(12)(xi). (See the comments accompanying these sections for the specific disclosure requirements.)

As an alternative to the combined disclosure method, creditors may prepare separate disclosure forms where multiple options exist. For example, creditors offering more than one payment option during the draw phase or during any repayment phase of a plan may choose to create separate disclosure forms for such variations. Thus, creditors who offer consumers a choice during the draw period, for example, of (1) minimum payments equal to any accrued unpaid finance charge or (2) minimum payments equal to two percent of the outstanding balance, could choose to create separate disclosure forms for the two payment options. Creditors who follow this alternative of preparing separate disclosures must include a statement on each form that the consumer should ask about the creditor's other home equity programs. (This disclosure would be required only with respect to other programs available to the public and not, for example, employee preferred-rate plans.) Creditors would have to provide disclosures about their other programs as soon as reasonably possible in response to any request for the disclosures.

Section 226.5b(b)—Time of Disclosures

Section 226.5b(b) requires the disclosures and brochure to be given at the time an application is provided to the consumer. In the case of applications contained in publications such as magazines or received by the creditor through third parties, footnote 10a allows the creditor to mail or deliver the disclosures and brochure to the consumer within three business days of its receipt of the application. Several commenters suggested this three-day period begin upon receipt of a "completed application", recommending that the Board use the term as used in Regulation B (which implements the Equal Credit Opportunity Act). This has not been adopted in the final regulation. Regulation B uses the term "completed application" to begin the time period in which creditors must notify an applicant of action taken on an application. This is appropriate since a creditor may not be able to make a credit decision until all relevant information has been received. The purpose of the home equity early disclosure rules is quite different. They are meant to assist consumers in shopping for credit; thus it is important to provide information early in the shopping process.

The three-day delay applies where the creditor takes an application over the telephone. If, however, the consumer simply requests over the telephone that an application be mailed, the creditor must provide the disclosures and a brochure with the application sent to the consumer. (Creditors should consult the rules in § 226.5b(h) regarding the imposition of a nonrefundable fee before receipt of the disclosures.)

Some creditors use a general purpose application for their home equity plans as well as their other credit products. The home equity disclosures and brochure must accompany this type of application if the application or materials accompanying it indicate that it can be used to apply for a home equity line of credit. In addition, if a general purpose application is provided to a consumer as a result of an injury about a creditor's home equity plan, the disclosures and brochure must accompany the application, even if the application or accompanying materials do not specify that it can be used to apply for a home equity plan.

Commenters also asked how the disclosure rules relate to mail solicitations and so-called "take-ones." In cases where the creditor sends applications through the mail, the creditor must send the disclosures and a brochure along with the application. Applications made available to the public without need for a request, such as "take-ones," also have to be accompanied by (or combined with) the disclosures and a brochure.

Several commenters raised the issue of whether disclosures had to be provided with "response cards." Some creditors provide a response card instead of an application in solicitation materials sent to consumers. Consumers are requested to return the card to the creditor to indicate their interest in the home equity product. Creditors need not provide the home equity disclosures and brochure with the response card if the only action taken by the creditor upon receiving the card is to send an application form to the consumer (which would then be accompanied by the disclosures and a brochure), or to telephone the consumer regarding an

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application.

In any situation in which footnote 10a applies, thus permitting a delay in disclosures, the creditor may determine within the three-day period that the application will not be approved. In such a case, the creditor need not provide the disclosures or the brochure. The same would be true if the consumer withdraws the application within that time period.

If an application contained in a magazine or other publication is mailed to an intermediary or broker or if such a person takes an application over the telephone, footnote 10a permits that person to mail the disclosures and a brochure within three business days of receipt. (See the discussion below of when such third parties have a duty to provide disclosures.)

Section 226.5b(c)—Duties of third parties

In addition to requiring creditors to provide disclosures and a brochure to consumers at an earlier time, § 226.5b(c) of the regulation imposes a limited duty on third parties who provide applications to consumers.

Under § 226.5b(c), a third party is required to provide disclosures only if that party has the disclosures for a creditor's particular home equity plan in its possession. Third parties do not have an affirmative duty to obtain such disclosures about a creditor's program, or to create a set of disclosures based on what the third party knows about a creditor's program. The Board believes that requiring both a third party and a creditor to provide the consumer with identical information about the same plan would result in unnecessary duplication. If, however, a creditor supplies disclosures to a third party along with its application form, the third party must give the consumer the disclosures when the application form is given out. In all cases, consumers will be provided disclosures by the creditor within three days after the creditor receives the application. Furthermore, a nonrefundable fee cannot be collected from the consumer by the creditor or a third party until after the consumer receives the disclosures. (See § 226.5b(h).)

Although the duty of third parties to provide the disclosures may arise infrequently, the regulation requires third parties, in all cases, to give the home equity brochure at the time an application is given to the consumer. Because providing the brochure is not linked to the availability of information from a creditor about its specific plan, the Board believes third parties will have access to the brochure, and thus be able to provide it with the application.

This provision imposes duties on third parties and not on creditors. Therefore creditors are not responsible for ensuring that the third parties comply with the requirements of this section.

Section 226.5b(d)—Content of disclosures

Section 226.5b(d) of the regulation lists the information to be given to consumers when they receive an application for home equity plans. As is the case with existing Truth in Lending disclosure rules, the information would be provided only to the extent applicable; thus, for example, if negative amortization cannot occur in a program, no mention of it need be made.

Section 226.5b(d)(1)—Retention of information

Because the disclosures need not be in a form the consumer can keep, the consumer will be advised to make and retain a copy of the disclosures. Creditors need not include this statement if the disclosures are in a form the consumer can keep, for example, if the disclosures are not part of the form that must be returned to the creditor to apply for a plan.

Section 226.5b(d)(2)—Conditions for disclosed terms

Creditors will include a statement of any time by which an application must be submitted to obtain specific terms disclosed. A number of commenters misunderstood this provision in the proposal. Creditors are free to not guarantee any terms, in which case they must indicate that all of the terms are subject to change. In that case, they need not include a date or time period. The legislative history makes clear that a creditor also may choose to guarantee some of the terms of the plan and not others. If creditors choose to guarantee only some of the terms, they must indicate which terms may change prior to opening the plan. Creditors can provide a specific date or use a time period as long as the consumer can determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms.

Creditors also must notify the consumer of the right to a refund of all fees paid in connection with the application if any disclosed term changes before opening the plan and as a result the consumer chooses not to enter into the plan. The final regulation has been amended to clarify that this provision does not apply to changes resulting from fluctuations in the index value in a variable-rate plan; this includes changes in the APR and changes in the maximum rate or "cap" if it is expressed as an amount over the initial interest rate. (See the discussion of this provision at § 226.5b(g).)

Section 226.5b(d)(3)—Security interest and risk to home

Creditors will have to disclose the fact that a security interest is being taken in the consumer's dwelling and that the consumer may lose the home in the event of default.

Section 226.5b(d)(4)—Possible actions by creditor

Under § 226.5b(d)(4), a statement must be provided that, under certain circumstances, a creditor may terminate the plan and accelerate any outstanding balance, prohibit additional advances or reduce the credit limit, and, if applicable, implement certain modifications to the original terms, as set forth in the initial agreement. The regulation, in conformity with the legislative history accompanying the act, also requires a statement that fees may be imposed if the account is terminated by the lender. This disclosure regarding fees is required, for example, if a penalty or prepayment fee may be imposed upon termination by the lender in such circumstances. The disclosure would not be required if the fees are the same ones that would be imposed when the plan expires in accordance with the agreement. The actual amount of such fees need not be provided. In response to commenters, the Board is clarifying that this disclosure is not required if the only fees that may be imposed upon termination are fees such as attorney fees or court costs involved with the collection of the debt. Additionally, an increase in the APR—such as a higher rate of interest if the consumer fails to make payments—does not trigger this disclosure.

Section 226.5b(d)(4)(ii) provides that consumers will be notified that they can receive, upon request, a description of the conditions that permit the creditor to terminate the plan, prohibit additional advances or reduce the credit limit, and implement modifications during the term of the plan. Upon receiving a request from a consumer for such information prior to the consumer opening the plan,

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the creditor must provide this information as soon as reasonably possible. This requirement had previously been incorporated in § 226.5b(g) of the proposal.

As an alternative to disclosing that the consumer has the right to receive a statement of the conditions under which the creditor may take the indicated actions, § 226.5b(d)(4)(iii) provides that the creditor may simply disclose what those conditions are. One way to make this disclosure is to provide a highlighted copy of the contract, security agreement or other document which contains such information. The relevant items must be distinguished in some fashion from the other information contained in the document, for example, by use of a cover sheet that specifically points out which contract provisions contain this information, or by marking the relevant items. If a creditor does not choose to provide a document of this sort, it may simply describe the conditions using the language in §§ 226.5b(f)(2) and 226.5b(f)(3)(vi). If specified changes may be implemented during the plan as described in § 226.5b(f)(3)(i), a statement such as the following could be made: "The initial agreement permits us to make certain changes to the terms of the line at specified times or upon the occurrence of specified events." Whichever method is used to provide the list of conditions, it may appear with the segregated disclosures or apart from those disclosures. If it is with the segregated disclosures, it need not appear before other disclosures.

Section 226.5b(d)(5)—Payment terms

Under § 226.5b(d)(5), creditors are required to describe the payment terms of the plan, including the length of the draw period and any repayment period. (The combined length of the draw period and any repayment period does not have to be stated.) If the length is indefinite, creditors would state that fact.

Several commenters requested guidance on how renewal provisions should be handled in making these disclosures. If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to "renew" or extend the original draw period of the plan, such provisions should be ignored for purposes of the disclosures. Thus if an agreement provides that the draw period is for five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. A creditor may discuss a renewal feature with the other disclosures without violating the segregation rules.

Where a creditor provides a combined disclosure form for all of its home equity offerings, all payment options must be stated, including any different payment terms that may exist during the draw period and during any repayment period, as well as any differences that may apply within either period. As mentioned in the discussion of conversion rules under § 226.5b, creditors may give some of the disclosures about the repayment phase at the time of conversion, rather than with the early disclosures. Whether those disclosures are delayed or not, creditors must provide the basic payment terms information under § 226.5b(d)(5)(i) and (ii) with the early disclosures about both the draw and repayment phases.

If the plan permits the consumer to convert any of the loan balance to a fixed repayment term, this feature must be disclosed under § 226.5b(d)(5)(ii). Such a provision would be ignored for purposes of other disclosures, however, including the historical table under § 226.5b(d)(12)(xi).

The disclosures must set forth how the minimum periodic payment is determined, the frequency of payments, and whether making only the minimum payments may not repay any or all of the principal balance by the end of the plan. The regulation also calls for a disclosure of the possibility of any balloon payment. Under some programs, a balloon payment may occur under certain circumstances, but is not certain or even likely. In such cases the disclosure would indicate that a balloon payment *may* occur. In other cases, such as programs where payments include interest only, a balloon payment will occur as a matter of course and the disclosures should reflect that fact. If repayment of the entire outstanding balance would be required only in the case of termination and acceleration, the balloon disclosure would not apply. Section 226.5b(d)(5)(ii) does not require the amount of any balloon to be provided. (See the requirement under § 226.5b(d)(5)(iii), however.) The term "balloon payment" need not be used. Several commenters asked whether a final payment that is only slightly larger than any other payment (for example, because of rounding) must be considered a balloon payment. Creditors need not disclose there is a balloon payment if the final payment is not more than twice the amount of other minimum payments under the plan. An explanation of the balance computation method is not required by this section.

Section 226.5b(d)(5)(iii) requires creditors to disclose an example, based on an assumed $10,000 outstanding balance and a recent APR, showing the amount of the minimum periodic payment and of any balloon payment, and the time it would take to pay off the balance if the consumer made only those payments. If it is relevant to calculating its payments, a creditor may assume the credit limit as well as the outstanding balance is $10,000. The issue was raised of whether a creditor that only offers lines of credit for less than $10,000 would have to use this amount in the example. If a creditor only offers lines of credit under $10,000, the creditor may use an alternative assumed outstanding balance of $5,000 rather than $10,000.

Footnote 10c provides that, for fixed-rate plans, a recent APR is one that has been in effect under the plan within the twelve months prior to the date the disclosures are provided to the consumer. The footnote also provides that, for variable-rate plans, a recent APR is the most recent index value and margin provided in the historical table (see § 226.5b(d)(12)(xi)), or a more recent rate.

As an alternative to providing examples for each payment option—in plans that have multiple payment options within the draw period or within any repayment period—creditors may provide representative examples. For purposes of this disclosure, as well as for the variable rate disclosures under § 226.5b(d)(12)(x) and (xi) the Board is establishing three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges ("interest only" plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2% of the balance or 1/180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories, even if other features exist, such as varying lengths of a draw or repayment period, required payment of any past due amounts, minimum dollar amounts, and the payment of late charges.

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The creditor may use a single example within each category to represent the payment options in that category. For instance, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the § 226.5b(d)(5)(iii) example for that option alone. The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. Creditors choosing to use a representative example within each category must use the same examples for purposes of the disclosures under § 226.5b(d)(5)(iii), 226.5b(d)(12)(x), and 226.5b(d)(12)(xi). Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods.

This approach of allowing a single example to represent a category of payment options does not apply to the requirements under any other provisions. Creditors must fully describe all payment options under § 226.5b(d)(5)(i) and (ii). Similarly, the payment information provided in accordance with § 226.6(e)(2) must reflect the actual payment option chosen by the consumer (or all of the options available if the consumer retains several options during the plan).

Certain "reverse mortgages" (sometimes called "reverse annuity mortgages" or "RAMs") involve an open-end line of credit and require repayment in full only when certain events occur, such as the consumer's death. These RAMs are subject to the new rules if the line is secured by the consumer's dwelling. The payment disclosures will reflect that a single payment is due when one of the specified events happens. The single payment may be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under § 226.5b(d)(5)(iii) should assume a single, $10,000 advance to the consumer when the plan is opened and should assume repayment will occur upon the consumer's death, if that is one of the events requiring repayment. In such cases, the disclosures may be based on a representative life expectancy, that is, one that is an average of, or is typical of, life expectancies recently used in developing the creditor's RAM. In making the disclosures, the creditor must assume that the $10,000 advance and any accrued interest will be paid in full by the consumer and must disregard any non-recourse provision (which provides that the consumer is not obligated for an amount greater than the value of the dwelling). Some RAMs provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. As part of the disclosure of the payment terms, the creditor also must describe the shared appreciation feature. (See the discussion of this feature under § 226.5b(f)(3)(i).) (See also the discussion of RAMs under § 226.5b(d)(12) (x) and (xi).)

Section 226.5b(d)(6)—Annual percentage rate

Section 226.5b(d)(6) provides that, for fixed-rate plans, a recent APR will be provided. Consumers also must be told that the APR does not include costs other than interest. Some commenters argued that the proposal's reference to "the APR" was too broad since the "historical APR" on periodic statements does in fact include finance charges other than interest. The introduction to § 226.5b makes clear that APR as used throughout § 226.5b refers to the APR that corresponds to the periodic rate, as determined under § 226.14(b).

Section 226.5b(d)(7)—Fees imposed by the creditor

Under § 226.5b(d)(7), creditors will provide a description and the amount of charges they impose to open, use and maintain the account, and a statement of when the consumer must pay the charges. These fees include items such as application fees, points, annual fees, transaction fees, and fees imposed when the plan converts to a repayment phase (if the conversion is provided for in the original agreement). Fees imposed by third parties, that are initially paid by the consumer to the creditor, may be included in this disclosure or in the disclosures under § 226.5b(d)(8). As discussed in § 226.5b(f)(3)(i), a creditor may provide a step fee schedule in which a fee will increase a specified amount at a specified date. The amount of any fees and when the fee is payable must be disclosed under this section. Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit or house value. Several commenters asked whether fees imposed for late payment, stop payment, exceeding the credit limit, or closing out an account would have to be disclosed under this section; they do not. Creditors need not use the term "finance charge" or "other charge" in describing the fees imposed by the creditor under this section or those fees imposed by third parties under § 226.5b(d)(8).

Some creditors provide that they will rebate closing costs, for example, to the extent any interest is paid during the first year of the plan. Regardless of such a provision, if closing costs are imposed—even if possibly "rebated" later—creditors must disclose such costs. (The existence of the rebate feature may be included in the disclosures.)

Section 226.5b(d)(8)—Fees imposed by third parties to open a plan

Under § 226.5b(d)(8), an estimate of the total fees imposed by third parties to open the account (such as appraisal, credit report, government agency and attorney fees) stated as a single dollar amount or a range will be provided. Fees imposed by third parties, even if initially paid to the creditor, may be included in this disclosure. Even if such fees may be "rebated" (as discussed in § 226.5b(d)(7)), they must be disclosed. In response to comments, the Board has modified the regulation to clarify that this section covers only those fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee imposed by a third party, such as a government agency, at the end of a plan to release a security interest.

Creditors also must provide a statement that the consumer may request more specific cost information about such fees from the creditor. Upon receiving a consumer's request for such an itemization prior to the consumer opening the plan, the creditor must respond as soon as reasonably possible. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures. Where impractical to provide the dollar amount, fees may be expressed on a unit cost basis, for example, $.50 per $100 of the credit line. If provided, this itemization may appear together with or separate from the other disclosures.

Section 226.5b(d)(9)—Negative amortization

Under § 226.5b(d)(9), a statement if the plan has negative amortization—which will increase the principal balance and reduce the consumer's equity in the dwelling—must be provided.

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Section 226.5b(d)(10)—Transaction requirements

Section 226.5b(d)(10) requires creditors to state any limitations on the number of extensions or amount of credit that can be obtained during any time period, and any minimum draw or minimum outstanding balance requirement stated as a dollar amount or as a percentage. A limitation on ATM usage is not covered by this provision, unless that is the only means by which the consumer can obtain funds. This provision does not require a disclosure of the maximum credit limit offered by the creditor.

Section 226.5b(d)(11)—Tax implications

Section 226.5(d)(11) requires that consumers be told to consult a tax advisor if further information regarding the deductibility of interest and charges under the plan is desired.

Section 226.5b(d)(12)—Disclosures for variable-rate plans

Section 226.5b(d)(12) requires creditors to provide information about any variable-rate feature contained in a plan. Many of these disclosures closely parallel the disclosures currently required for closed-end variable-rate transactions secured by a consumer's principal dwelling. (See § 226.19(b) of the regulation.) As discussed above in the general comments on § 226.5b, under this section information must be provided as to variable-rate features of both the draw period and any period in which repayment occurs with no further ability to obtain advances. There is, however, some flexibility regarding the timing of the disclosures about the repayment period. These disclosures, like others, need be provided only as applicable. (See § 226.5b(f)(3)(i) for features that are not considered variable rate and thus do not require disclosure under this section.)

Subsection (i)—APR may change. Creditors are required to state that the APR may change and that the payment or term may change due to the fact that the APR is variable.

Subsection (ii)—APR includes only interest. A statement that the APR does not include costs other than interest must be provided. (See the discussion at § 226.5b(d)(6) about the fact that this refers to the APR that corresponds to the periodic rate.)

Subsection (iii)—Index information. Creditors have to identify the index used to determine rate adjustments and a source of information about the index. (See the comments accompanying § 226.5b(f)(1) for further discussion of what constitutes a source of information.)

Subsection (iv)—How the APR is determined. Creditors have to describe how the APR will be determined (for example, by stating that a margin is added to the index value). This provision does not require disclosure of the specific amount of the margin.

Subsection (v)—"Ask about" current rate information. Because the disclosure forms can be preprinted and rate information may not be current, consumers will be told to "ask about" the current index value, margin, discount or premium (if applicable), and APR.

Subsection (vi)—Discounted or premium rate. If the initial rate is discounted or is a premium, a disclosure of that fact as well as the period the discounted or premium rate will be in effect must be provided.

Subsection (vii)—Frequency of changes in the APR. The frequency of changes in the APR must be stated, for example, monthly or quarterly.

Subsection (viii)—Rules relating to index value, APR and related changes. Rules relating to changes in the index value and the APR and resulting changes in the payment amount must be set forth. This provision requires an explanation of preferred-rate provisions in variable-rate plans, where the rate will increase not only when the index increases but also upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ, or the consumer closing an existing account with the creditor. Similarly, an explanation must be given if the plan permits the consumer to switch from a variable rate to a fixed rate, including disclosure of whether a fee may be imposed for such a change. Any payment limitations and the possibility of rate carryover also must be provided.

Subsection (ix)—Rate limitations. The proposal required a statement of any annual limitations on rate increases. Several commenters raised concerns about how to comply if their rate caps were not expressed as annual limits (for example, if there were only monthly caps). In response to this concern, the regulation provides that an annual cap must be stated if there is one, and that a rate cap for a shorter period can be stated instead if there is no annual cap. Caps for shorter periods must be stated in terms of a specific amount of time (for example, six-month limitations). A limit based on twelve monthly billing cycles should be treated as an annual cap. If there are no annual (or shorter) limits on rate increases, the fact that there is no annual limit must be stated.

The maximum rate that may be imposed under each payment option over the life of the plan also must be provided. The life of the plan includes the draw period and any repayment period that is provided for in the original agreement. This rate may be stated as a specific rate (for example, 18%) or as a stated amount above an initial rate (for example, 5 percentage points above the initial interest rate). In either circumstance, creditors may use a range of the lowest and highest rate limitations that may be applicable in disclosing both the periodic limitations and the maximum overall rate in the early disclosures given at application. Creditors that disclose the caps as ranges and creditors that disclose the maximum rate as a stated amount above an initial rate must include a statement that the consumer should ask about the rate limitations that are currently applicable. This statement may be included with the other features consumers are told to ask about under § 226.5b(d)(12)(v).

Subsection (x)—Maximum payment example. Creditors must show the minimum periodic payment required when the maximum rate for each payment option is in effect, based on a $10,000 outstanding balance. (See the discussion in § 226.5b(d)(5) for circumstances in which creditors may use a lower outstanding balance.) If a range is used to disclose the maximum cap under § 226.5b(d)(12)(ix), the highest rate in the range must be used for this disclosure. The disclosure also must state the earliest time the maximum rate could be imposed; this would reflect, for example, the effect of periodic rate caps.

As an alternative to making disclosures based on each payment option, creditors may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the discussion at § 226.5b(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods.

In a single payment open-end reverse mortgage, creditors should assume that the APR reaches the maximum as quickly as permitted under the plan and that the maximum rate stays in effect until repayment is called for. (See the discussion at § 226.5b(d)(5) concerning the other assumptions that the creditor should make in disclosing RAMs.)

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Subsection (xi)—Historical example. A 15-year historical table, based on an assumed $10,000 initial extension of credit and showing how the APRs and payments would have been affected by the index value changes under the plan, must be provided. (See the discussion in § 226.5b(d)(5) for circumstances in which a creditor may use a lower outstanding balance.) Index values and APRs must be shown for the entire 15 years and must be based on the most recent 15 years. If the length of the plan is less than 15 years, however, payments need only be shown for as long as the plan lasts. If the values for an index have not been available for 15 years, creditors need only go back as far as the values have been available in giving the history and may start the example at the year for which values are first available. In providing this information, creditors should assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan. Creditors should assume that the consumer takes no subsequent draws. (If relevant, the creditor may assume the $10,000 is both the advance and the credit limit.)

The history must reflect the method of choosing values for the plan. For instance, if an average of index values is used in the plan, averages would be used in the history, but if an index value as of a particular date is used a single index value would be shown. The creditor is required to assume one date within a year (or one period, if an average is used) on which to base the history of index values for each loan plan. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the index history.

Only one index value per year need be shown, even if the plan provides for adjustments to the APR or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the APR and payment. Updating will be necessary only once each year to reflect the most recent year's index value. To assist creditors in constructing histories of certain common indices, the Board is publishing in this notice tables of index values for commonly used indices.

The payment figures in the example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted APR, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have been applicable. Both periodic and overall rate limitations must be reflected in the example. If ranges of rate limitations are provided under § 226.5b(d)(12)(ix), the highest annual and overall rates must be used in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2% annual cap.

Creditors need show only one payment per year in the table, even though payments may vary during a year. (The calculations, however, should be based on the actual payment computation formula.) Creditors may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date. Creditors must be consistent in the manner of selecting the month that is used to illustrate payment information.

A few commenters asked whether annual balance information or balloon payments could be added to the table. Information about the remaining balance and any balloon payment may, but need not, be reflected in the table.

Creditors need not provide the required historical disclosure for all of their various payment options, but may select a representative payment option within each of the three categories of payments upon which to base their disclosure. (See the discussion at § 226.5b(d)(5).)

An historical example is required for single payment plans such as RAMs. Although 15 years of index values and APRs would be shown, the payment column would be blank until the year that the single payment would be required, assuming that payment is estimated to occur within 15 years. (See the discussion at § 226.5b(d)(5) for additional guidance in making RAM disclosures, including the assumptions to be made about the term for repayment.)

A value for the margin must be assumed in order to prepare the example. Creditors must select a margin that they have used during the six months preceding preparation of the disclosures and state that the margin is one that they have used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values. Similarly, if the home equity plan has a discounted or premium initial rate, creditors will be permitted to select a discount or premium that has been used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. A creditor may assume that a discount or premium that will be in effect for part of a year is in effect for the entire year for purposes of reflecting it in the example.

In setting forth the historical example under this section, creditors that choose to provide disclosures about the repayment phase as part of the early disclosures (see the general discussion about conversion under § 226.5b) must reflect all features of the repayment phase in the table, including the appropriate index values, margin, length of the phase, and payments. For example, if different indices are used during the draw and repayment phases, the index values for that portion of the 15 years that reflects the repayment phase must be the values for the appropriate index.

Creditors who choose to provide information about the repayment phase at the time the plan converts to the repayment phase, rather than with the early disclosures, need not reflect the repayment phase in the table (just as they may omit information about the repayment phase for purposes of all the disclosures under § 226.5b(d)(12)). In such cases, the index values and APRs relating to the draw period would be shown for the entire 15 years (even if the draw period is less than 15 years).

Section 226.5b(e)—Brochure

Section 226.5b(e) requires both creditors and third parties providing applications to furnish consumers with a brochure prepared by the Board describing home equity plans, or a suitable substitute. The Board's brochure (which is expected to be published by the end of June 1989) describes home equity plans, including the potential advantages and disadvantages. The brochure also provides guidance on how to compare home equity plans with closed-end credit. The Board envisions that any substitutes must be comparable in substance and comprehensiveness, recognizing that some lenders' brochures may contain more detailed descriptions of their particular home equity programs than contained in the Board's brochure.

The regulation requires third parties

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to provide consumers with the brochure if an application is given to the consumer by the third party. The Board believes, however, that requiring a second brochure to be given by the creditor in such circumstances is unnecessary. Therefore, the creditor's duty to provide the brochure will be met if the third party provides the brochure to the consumer. This will avoid duplication.

A number of commenters misunderstood this provision in the proposal, thinking that the Board was attempting to make creditors directly liable for a duty that the act places on the third party. In fact, this provision does not affect the duty of the third party but merely relieves creditors of the need to give a second brochure to the consumer on condition that the creditor ensures that the brochure was actually given. If a creditor does not wish to rely on the actions of the third party, it of course may provide a copy of the brochure.

Section 226.5b(f)—Limitations on home equity plans

The substantive limitations in § 226.5b(f) apply to both actions creditors may take and the provisions that they include in contracts. These limitations apply to assignees and holders as well as the original creditor. The substantive rules apply to both the draw period and to any repayment period that is provided for by the initial agreement. (If the agreement does not call for a repayment period, and the parties subsequently enter into a closed-end transaction to pay off the outstanding balance, the later agreement is not subject to the substantive limitations.)

Section 226.5b(f)(1)—Changing the APR

Under § 226.5b(f)(1), a creditor may change the APR after the plan is opened only if the change is based on an index outside the creditor's control and the index value is available to the public. This provision prohibits a creditor from using its own prime rate or its own "cost of funds" or simply retaining the right to change rates at its discretion. A creditor is permitted, however, to use the prime rate published in a publication or a newspaper, such as the *Wall Street Journal*, for example, even if the bank's own prime rate is one of several rates used to establish that rate. A creditor also may use any other index not within the creditor's control. A publicly available index need not always be published in a newspaper, but the creditor must make certain that a consumer could independently verify any rate information.

This provision does not prohibit specific rate changes if set forth in the initial contract, such as in preferred rate and step rate plans, as provided under § 226.5b(f)(3)(i).

Section 226.5b(f)(2)—Termination and acceleration

Under § 226.5b(f)(2), creditors are prohibited from terminating an account and accelerating payment of the outstanding balance prior to the scheduled expiration of the plan. If a creditor offers an "evergreen" account, that is, one that has a potentially indefinite draw period, a creditor may not terminate the plan or accelerate payment of the balance.

There are three exceptions to the rule against termination and acceleration. First, a creditor may terminate the plan if there has been fraud or material misrepresentation by the consumer in connection with the plan. This exception includes fraud or misrepresentation at any time, either during the application process or during the draw period and any repayment period. What constitutes fraud or misrepresentation is determined by State law and the agreement between the parties and may include acts of omission, as well as overt acts, as long as any necessary intent on the part of the consumer exists.

Second, a creditor may terminate the plan and accelerate the balance if the consumer has failed to meet the repayment terms of the agreement. This provision permits termination if the consumer actually fails to make payments. A creditor may not terminate a plan if, for example, the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. Filing for bankruptcy may permit termination, if the consumer fails to make payments under the plan.

Finally, a creditor is permitted to terminate and accelerate if the consumer acts or fails to act in a way that adversely affects the creditor's security for the plan, or any right of the creditor in such security. In response to commenters, the Board has revised the regulation to more closely parallel the language used in the statute with regard to the creditor's rights in the security. The regulation limits the exception to action or inaction by the consumer (and not third parties) as provided in the statute.

This provision permits termination, for example, if the consumer transfers title to the property or sells the property without the permission of the creditor, or if the consumer fails to maintain required insurance on the dwelling. This exception also may be invoked if the consumer commits waste or otherwise destructively uses or fails to maintain the property such that it adversely affects the security.

Failure to pay taxes on the property or some other action by the consumer resulting in the filing of a lien senior to that held by the creditor also might impair the creditor's security. Death of the consumer and taking of property through eminent domain both permit termination since the title to the property transfers as a result. Commenters asked whether events such as the filing of a judgment against the consumer or illegal use of the property would permit termination. The Board believes that whether the creditor can terminate an account depends on the circumstances. For example, the filing of a judgment against the consumer would permit the creditor to terminate the plan if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. Foreclosure by a prior lienholder would permit termination of the line if the creditor's security interest is adversely affected.

If an event occurs which allows termination and acceleration, a creditor may take action short of terminating an account and accelerating payment of the outstanding balance. Commenters raised a number of questions about the permissible extent of such action. Under the final regulation, if one of the exceptions would apply, a creditor is permitted to temporarily or permanently prohibit additional extensions of creditor or reduce the credit limit without demanding payment in full. In addition, a creditor may take other action; for example, the creditor may change the payment terms or may require the consumer to pay a fee if the consumer fails to maintain required property insurance and the creditor subsequently purchases the insurance. A creditor may provide in its agreement that a higher rate or higher fees apply, for example, if the consumer fails to meet the repayment terms or otherwise acts so that the creditor is permitted to terminate the plan and accelerate the balance. Furthermore, a creditor that does not immediately and permanently terminate an account and accelerate payment or take another permitted action may take such action at a later time, if the condition constituting an

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exception under § 226.5b(f)(2) still exists at that time (or if another of the exceptions applies).

Creditors are not permitted to specify in their contracts any other events that allow terminating an account or accelerating payment of the outstanding balance beyond those listed in the regulation. Thus, for example, the contract may not contain a demand provision that may be exercised before the end of the stated term nor may it provide that the account will be terminated and the balance accelerated if the rate cap is reached.

Section 226.5b(f)(3)—Change of terms

Section 226.5b(f)(3) provides that a creditor in general may not change the terms under the plan after the account has been opened. Generally, a creditor may not increase any fee or impose a new fee once the plan has been opened. There are several exceptions to the rule prohibiting the creditor from changing the terms of the plan after it has been opened.

Subsection (i)—Events provided for in the contract. This provision permits a creditor to implement specific changes set forth in the contract that are contemplated on the occurrence of a specific event. Both the triggering event and the resulting modification must be stated with specificity. For example, in an employee loan program, the contract could provide that a specified higher rate—or specified higher margin in a variable-rate plan—will apply if the borrower's employment with the creditor ends. A creditor also could have a step rate or step fee schedule in which specified changes in the rate or the fees are set to occur on certain dates or at specified time periods. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific percentage of the appreciation and the specific circumstances in which it must be paid are set forth. A contract also may permit a consumer to switch among minimum payment options during the plan. This option could be provided in the initial agreement (as long as the specific features are described) or could be offered after the plan is opened since it would constitute a "beneficial change" as discussed in § 226.5b(f)(3)(iv).

Because this provision applies only to specific changes that are contemplated on the occurrence of specific events, the regulation does not permit a creditor to include a general provision in its contract permitting changes to any or all of the terms of the plan. For example, creditors may not include "boilerplate" language in the agreement stating that they reserve the right to change the fees imposed under the plan.

The regulation also does not permit a creditor to include in the initial agreement any "triggering events" *or* permissible responses that the regulation expressly addresses. Based on public comment, the proposal may not have been clear on whether the prohibition was intended to cover the inclusion of triggering events, or responses, or both. The Board intends that both be covered. For example, an agreement may not provide that the margin in a variable-rate plan will increase if there is a material change in the consumer's financial circumstances, since the triggering event (a material change in the consumer's financial circumstances) is set forth in the regulation and the permissible response (freezing the line or lowering the credit limit) is spelled out. Similarly a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decrease in property value since the regulation allows that response only for a significant decrease. A creditor may not freeze the line, reduce the credit limit, terminate the plan, or accelerate the balance except in those circumstances specified in the regulation, since such consequences are set forth in the regulation.

The Board solicited comment in the proposal on whether creditors should be permitted to specify a second index (for variable-rate plans) in the initial agreement, which would be used should the original index become unavailable. Based on further analysis, the Board believes the statute does not permit such an action since it expressly provides the conditions that must be met to substitute an index when the original index becomes unavailable. The Board has modified the requirement for this second index, however, as set forth under § 226.5b(f)(3)(ii), to provide greater flexibility to lenders if the original index becomes unavailable.

Subsection (ii)—Substitution of index. This provision provides that the creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the two indices were substantially similar, and as long as the new index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the new index is newly established and therefore does not have any historical rate history, creditors may nevertheless use it as long as the new index and margin produce an interest rate substantially similar to the rate in effect when the original index became unavailable.

Subsection (iii)—Changes made by written agreement. The regulation prohibits unilateral changes; it permits creditors to change the terms after a plan is opened provided the consumer expressly agrees in writing to the change at that time. Thus, for example, under this subsection a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance.

Any subsequent agreement must be consistent with the rules set out in § 226.5b(f). For example, a creditor and consumer could not enter into an agreement to base changes in the APR on the movement of an index controlled by the creditor, because § 226.5b(f)(1) provides that any index used as a basis for APR changes must be one not under the creditor's control. Similarly, an agreement could not specify events that will permit termination and acceleration beyond those set forth in the regulation.

In addition, creditors are not permitted to assume consent because the consumer uses an account, even if use of an account constitutes acceptance under state law. The Board believes this restriction will carry out the Congressional intent to limit changes after a plan is opened, yet accommodate the need for adjustments explicitly agreed to by the consumer.

Subsection (iv)—Beneficial changes. This provision permits creditors to make changes, after the plan has been entered into, that "unequivocally benefit" the consumer as long as the change is beneficial for the entire term of the agreement. In response to suggestions by commenters, the Board is providing additional examples of beneficial changes. A creditor may make changes that offer more options to consumers, as long as existing options remain. For example, a creditor could offer the consumer the option of making lower monthly payments or could increase the credit limit (although the right of rescission under § 226.15 may apply if the credit limit is increased). Similarly, a creditor could extend the length of the plan, as long as it was extended or renewed on the same terms. Creditors are permitted to temporarily reduce the rate or fees charged under a plan. The rate or fees, however, may not later be increased to a level higher than that initially disclosed. (If fees are later

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increased up to the original level, creditors may need to comply with the requirements in § 226.9(c) concerning notification of changes in terms.) Creditors also may add additional means to access the line even if fees are associated with using the device, provided that the consumer retains the ability to use prior access devices on the original terms.

Subsection (v)—Insignificant changes. This subsection provides an exception to the general prohibition against changing terms after the plan has been entered into for changes to "insignificant terms." This is intended to address operational and similar problems, such as changing the address of the creditor for purposes of sending payments. In response to commenters, the Board is providing additional examples of items that would constitute insignificant changes. The provision permits minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are used to determine changes to the rate for variable-rate plans. A creditor also may change its rounding rules, in accordance with the tolerance rules set forth in § 226.14. For example, a creditor may change its rules to state an exact APR of 14.3333 percent as 14.3 percent, even if it previously stated the APR as 14.33 percent. A creditor may change the balance computation method it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the daily balance method (including new purchases) to the average daily balance method (including new purchases). This exception would not permit a creditor to unilaterally change a term such as a fee charged for late payments.

Subsection (vi)—Temporary suspensions of credit and reduction of credit limit. This subsection provides that a creditor may temporarily prohibit additional extensions of credit or reduce the credit limit in seven circumstances. First, a creditor may take such action if the value of the dwelling that secures the plan declines significantly below the property's appraised value for purposes of the plan. A number of commenters asked the Board to provide guidance on what constitutes a "significant" decline in the property. The Board believes what constitutes a significant decline will vary according to individual circumstances. In any event, however, if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by fifty percent, that will be deemed a significant decline in the value of the dwelling for purposes of the regulation. For example, assume that a house with a first mortgage of $50,000 is appraised at $100,000 and the credit limit is $30,000. The difference between the credit limit and the available equity is $20,000. Therefore, the creditor could prohibit further advances if the value of the property declines from $100,000 to $90,000.

Second, a creditor may prohibit additional extensions of credit or reduce the credit line if the creditor reasonably believes the consumer will be unable to fulfill the repayment obligations under the plan due to a material change in the consumer's financial circumstances. Two conditions must be met for a creditor to use this exception. First, there must be a "material change" in the consumer's financial circumstances. For example, a significant decrease in the consumer's income could meet this part of the requirement. Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. This second condition has been modified from the proposal. A creditor does not have to rely on specific "evidence" (such as the failure to pay other debts) to meet this test. This provision does require, however, that the creditor have some basis for believing that the consumer will be unable to make payments under the plan.

The third exception permits a creditor to prohibit additional extensions of credit or reduce the credit line if the consumer is in default of any material obligations under the agreement. The regulation does not define what qualifies as a default of a material obligation. Some commenters requested that the regulation provide examples of what is a material default. A number of other commenters, however, expressly asked that the regulation not define or provide examples of this provision. They stated that any definition or use of examples might limit the conditions considered a default of a material obligation.

The fourth exception permits a creditor to prohibit additional advances or reduce the credit line if action by a governmental body precludes the creditor from imposing the agreed-upon APR. This exception will generally apply where, for example, a state usury law is enacted which prohibits a creditor from imposing the APR being used at the time of the action.

The fifth exception permits a creditor to prohibit additional advances or reduce the credit line if action by a governmental body adversely affects the priority of the creditor's security interest to the extent that the value of the security interest is less than 120 percent of the amount of the credit line (for example, through imposition of a tax lien).

The sixth exception enables creditors to suspend further advances or reduce the credit limit during any period in which the APR corresponding to the periodic rate reaches the maximum rate allowed under the plan. This provision permits a creditor to suspend credit advances even if a contract contains a "usury savings clause." For example, if a state enacts a rate ceiling lower than the maximum rate specified in the contract, a usury savings clause deems the new state ceiling to be the maximum rate permitted under the plan. Thus, the creditor may freeze the line during any period the APR reaches that maximum rate.

If the APR subsequently declines below the maximum APR, the creditor would have to reinstate credit privileges. This provision was contained in § 226.5b(f)(3)(i) of the proposal. It has been expanded to allow reduction in the credit limit as well as freezing of advances and therefore is part of § 226.5b(f)(3)(vi) which governs temporary suspensions.

Finally, a seventh exception has been added which permits a creditor to prohibit additional advances or reduce the credit line due to certain governmental actions. Several commenters expressed the concern that, because of the restriction on termination and change in terms, they might be required to continue to extend credit even when a federal or state regulatory agency had provided a notice that future extensions could constitute an unsafe and unsound banking practice. To avoid this problem the Board is adding a provision allowing a creditor to temporarily suspend further advances or reduce the credit limit when a regulatory agency with responsibility for supervising the creditor provides notification that continuing to advance funds may constitute an unsafe and unsound practice. The Board believes this limited exception is analogous to

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the statutory provisions which provide that a creditor may prohibit additional advances as a result of specified government actions.

Under the regulation, creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only as long as any of these seven circumstances exist. Thus, for example, if the creditor cuts off further advances due to a significant decline in the value of the dwelling and during the length of the draw period the value of the dwelling subsequently increases, the creditor would have to reinstate drawing privileges. If a second event occurs that would permit continuing the freeze, of course, the line need not be reinstated as long as that circumstance exists. The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment. (Section 226.9(c)(3) provides that a creditor must notify the consumer of the decision to freeze the line or reduce the credit limit.)

Several commenters asked whether the creditor is required to automatically reinstate credit privileges when the circumstances allowing suspension cease to exist; they pointed out that some state laws provide that future advances "relate back" to the mortgage only if the creditor is obligated to make advances. The concern was expressed that any advances made after the suspension may not have priority over intervening liens. If there are intervening liens in such a case, the exception provided in section 226.5b(f)(2)(iii) for consumer action that adversely affects the creditor's security interest would apply. Therefore, the creditor could refuse to make further advances due to the intervening lien resulting from consumer action.

A number of commenters asked the Board to provide guidance as to when credit privileges have to be reinstated. They were most concerned about having to constantly monitor accounts, particularly in cases where the consumer is in the best position to know if the circumstances triggering the freeze have changed.

Because the statute states that freezing the line can be only temporary, creditors have the responsibility of ensuring that the freeze is temporary. The creditor must monitor on a regular basis and reinstate credit privileges as soon as reasonably possible if the condition that permitted the creditor to take such action ceases to exist.

As an alternative to this ongoing duty, the Board is providing that the creditor may shift the initial duty to the consumer to request reinstatement of credit privileges. In this circumstance, when the creditor notifies the consumer of action taken, as discussed in § 226.9(c)(3), the creditor also must inform the consumer at the same time that reinstatement of credit privileges must be requested by the consumer. Once the consumer has made such a request, the creditor must investigate and determine whether the condition allowing the freeze has changed.

This section does not prohibit a lender from refusing to permit advances on a line if specifically requested to do so by a consumer. Thus, for example, if two consumers are obligated under a plan and each has the ability to take advances, the agreement may permit either of the two persons to direct the creditor not to make further advances; this section permits the creditor to honor such a request. This may be done only at the express request of one of the parties obligated under the plan. If that person subsequently requests reinstatement of draw privileges, the creditor must honor such a request, unless an event set forth in § 226.5b(f)(2) or § 226.5b(f)(3) permits a continued freeze or other action.

Section 226.5b(g)—Refund of Fees

Section 226.5b(g) imposes a duty on a creditor to refund all fees paid by the consumer in connection with an application if any term disclosed changes (other than one resulting from a variable rate index change) between the time the early disclosures are provided to the consumer and the time the plan is opened, and if, as a result of the change, the consumer decides to not enter into the plan. If a refund is required, it applies to all fees paid in connection with the plan, such as credit report fees, appraisal fees, and insurance premiums, whether such fees are paid directly to the creditor or to third parties. This requirement applies whether or not terms are guaranteed by the creditor under § 226.5b(d)(2)(i).

If a disclosure, such as the maximum rate cap, is stated as a range in the early disclosures, and the rate cap ultimately applicable to a plan falls within that range, a change will not be deemed to occur for purposes of this section. If, however, no range is used and the cap is changed, for example, from 5 to 6 percentage points over the initial rate, this change would permit the consumer to obtain a refund of fees. (See the discussion in § 226.5b(d)(2) dealing with changes in the maximum rate if tied to an initial variable rate.)

The fact that a term is stated in the early disclosures as an estimate does not render this section inapplicable if the term ultimately differs from that disclosed. For example, in the case of fees imposed by the creditor described in § 226.5b(d)(7), an increase in those fees—even if they were stated as estimates in the early disclosures—would entitle the consumer to a refund if the consumer decides not to enter into the plan because of that increase. In the case of the estimated disclosure of fees imposed by third parties under § 226.5b(d)(8), however, a change will not be deemed to occur even if the fees increase later. As in all cases, however, creditors must use the best information available in providing disclosures about such fees.

The refund of fees must be made as soon as reasonably possible after the creditor is notified that the consumer is not entering into the plan because of the changed term, or that the consumer wants a refund of fees. Some commenters questioned the relationship between this provision and the requirement that application fees be charged to all applicants in order to be excluded from the finance charge (pursuant to comment 4(c)(1)-1 of the Official Staff Commentary to Regulation Z). Refunding fees under this section does not affect that test.

The right to a refund of fees under this provision is distinct from the existing right of rescission under § 226.15, which applies only when a plan secured by the consumer's principal dwelling is opened.

Section 226.5b(h)—Imposition of nonrefundable fees

Under § 226.5b(h) neither the creditor nor any other party may impose a nonrefundable fee in connection with an application until three business days after the disclosures and brochure have been provided to the consumer. If disclosures are mailed to the consumer, footnote 10d of the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing. Several creditors asked whether a refundable fee can become nonrefundable. A refundable fee may become nonrefundable after the three-day period expires. If a fee is collected before the consumer receives the disclosures, the fee must be refunded if, within three days of receiving the disclosures, the consumer decides not to enter into the agreement.

The interaction of this provision with existing rules as well as other parts of

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the new rules is complex. Comment 5(b)(1)-1 provides that the creditor cannot collect a fee—except an application fee or a refundable membership fee—prior to the time the creditor provides the disclosures under § 226.6. Since membership fees may be collected prior to providing the § 226.6 disclosures only if they remain refundable (and since other fees such as appraisal and credit report fees may not be collected prior to providing the § 226.6 disclosures) the practical effect of § 226.5b(h) as to the fees collected by the creditor is limited to application fees, which may be collected at any time—provided they remain refundable until three business days after the consumer receives the § 226.5b disclosures. After the three-day period expires, an application fee may become nonrefundable except that, under § 226.5b(g), it must be refunded if the consumer elects not to enter into the plan because of a change in terms. (In addition, of course, all fees, including application fees, must be refunded if the consumer later rescinds under § 226.15.)

Section 226.6—Initial Disclosure Statement

Section 226.6(e)—Home equity plan information

In addition to the early disclosures given with an application, the amendments require certain additional disclosures at the time of opening a plan. Section 226.6(e) requires creditors to provide a few of the disclosures set forth in § 226.5b(d) along with the disclosures currently required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. This requirement can be met by providing a separate list or by identifying the provisions in the contract which contain such conditions. (See the discussion under § 226.5b(d)(4) regarding the form of this information.) The disclosures must be provided prior to the first transaction under the plan, in accordance with the existing rule in § 226.5(b).

Whereas the proposal stated that § 226.5b disclosures that duplicate existing § 226.6 disclosures need not be given, the final rule states specifically which disclosures must be given at the later time. Creditors have to provide, as applicable: (1) A statement of the conditions under which the creditor may terminate the plan or change the terms as described in § 226.5b(d)(4)(i); (2) the information in §§ 226.5b(d)(5) (i) and (ii) relating to the payment terms of the plan (including both the draw period and any repayment period); (3) the information in § 226.5b(d)(9) relating to negative amortization; (4) the information in § 226.5b(d)(10) relating to transaction requirements; (5) the information in § 226.5b(d)(11) relating to tax implications; and (6) a statement that the APR corresponding to the periodic rate imposed under the plan does not include costs other than interest.

Creditors also have to provide the payment example disclosure under § 226.5b(d)(5)(iii) and the variable-rate information under §§ 226.5b(d)(12) (viii), (x), (xi), and (xii) unless the following conditions are met: (1) The early disclosures were provided in a form a consumer could keep; and (2) the early disclosures of the payment example under § 226.5b(d)(5)(iii), the "worst case" example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen. For example, if a creditor offers three payment options (one in each of the categories described in § 226.5b(d)(5)) and describes all three options in its early disclosures and provides the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or 226.5b(d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case if it chose to give a separate disclosure form rather than a combined form, as discussed under § 226.5b(a)), the § 226.5b(d)(5)(iii) information and §§ 226.5b(d)(12) (viii), (x), (xi) and (xii) disclosures must be given to any consumer who chose one of the other two options. If the § 226.5b(d)(5)(iii) and § 226.5b(d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

In cases where the creditor has included complete information about both the draw and repayment phases in the § 226.5(b) disclosures given at application, the creditor should similarly make disclosures about both phases when giving the second set. In particular, such a creditor must include the disclosures in § 226.6(e) and the information required in footnote 12 (dealing with any variable-rate feature) for the repayment phase.

On the other hand, if the creditor defers providing the bulk of the § 226.5b disclosures for the repayment phase until conversion, the creditor does not have to provide any information about the repayment period under § 226.6 other than the basic payment items listed in § 226.6(e)(2). Thus, for example, if the disclosures are delayed, the creditor would not have to give the variable-rate information set out in footnote 12 for the repayment phase.

The segregation standard set forth in § 226.5b(a) does not apply to the second set of disclosures provided by the creditor prior to the first transaction under the plan. Rather, they are governed by § 226.5(a)(1), which does not require segregation from other information. These disclosures may be integrated into the contract. In addition, the disclosure of conditions for certain actions described in § 226.5b(d)(4)(i) does not have to precede the other disclosures. Like the existing § 226.6 disclosures, the additional disclosures must be in a form the consumer can keep.

Section 226.9—Subsequent Disclosure Requirements

Section 226.9(c)—Change in terms

The Board is adding a new paragraph (3) to § 226.9(c) to require creditors to provide a notice to consumers if the creditor, under § 226.5b(f)(3)(vi), prohibits additional advances of credit or reduces the credit limit. Under § 226.9(c)(3), creditors have to mail or deliver a written notice of the action to each consumer who is affected. The notice may be provided within three business days after the time the action is taken, rather than in advance of the action. The creditor must notify the consumer of the action taken, and the reason such action has been taken (for example, due to reaching the rate cap under the plan). If the creditor requires the consumer to request reinstatement of the line, the notice shall also include a statement to that effect. (See the discussion under § 226.5b(f)(3)(vi) covering the creditor's duty with regard to reinstatement.)

Section 226.14—Determination of Annual Percentage Rate

Section 226.14(b)—Annual percentage rate for §§ 226.5a and 226.5b disclosures, for initial disclosures and for advertising purposes

Section 226.14(b) is modified by adding a reference to new § 226.5b. The

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introduction to § 226.5b provides that, throughout § 226.5b, the term annual percentage rate is the APR as determined under § 226.14(b). Section 226.14(b) is modified to reflect this provision.

Section 226.14(b) also is modified to refer generally to §§ 226.6 and 226.16, rather than specifically to §§ 226.6(a)(2) and 226.16(b)(2). These provisions are modified because the APR described in the new home equity rules (added to §§ 226.6(e) and 226.16(d)) also is calculated in accordance with the rules in § 226.14(b).

Section 226.15—Right of Rescission

Section 226.15(a)—Consumer's right to rescind

Section 226.15(a)(3) of the regulation states that the consumer may exercise the right of rescission until midnight of the third business day following the opening of the plan, delivery of the notice of the right to rescind, or delivery of all "material disclosures," whichever occurs last. Footnote 36 to this section contains the definition of material disclosures. In the proposal, the Board requested comment on whether to add to the definition certain payment information provided under § 226.6(e). The Board is amending footnote 36 to provide that the payment terms required under § 226.6(e)(2) be treated as a "material disclosure" for purposes of the right of rescission. Including such payment terms in the definition of "material disclosures" is consistent with what constitutes material disclosures in the closed-end credit rescission provisions, and the statutory definition of material disclosures. In addition the Board believes that payment information is important for a consumer to know in order to decide whether to exercise the right of rescission. Neither the payment terms nor any other information given with the first set of disclosures at the time of application is a material disclosure for purposes of rescission.

Section 226.16—Advertising

Section 226.16(d)—Additional advertising requirements for home equity plans

Under § 226.16(d)(1), any reference to a payment term in a home equity advertisement for the draw period or any repayment period (including the length of the plan and any reference to how the minimum payments are determined and the timing of such payments) will "trigger" further disclosures, including loan fees, estimates of other fees that may be imposed, and, for variable-rate plans, the maximum rate that may be imposed under the plan.

Furthermore, if any of the "triggers" set forth in § 226.6 (a) or (b) or any payment information is stated affirmatively or negatively, further disclosures must be given. For example, if a creditor states "no annual fee" or "no points" in an advertisement, additional information must be provided.

Section 226.16(d)(2) provides that if an advertisement states a "discounted" APR or a "premium" APR it must state in equal prominence the APR derived by use of the fully-indexed value. Section 226.16(d)(3) provides that, if an advertisement contains a reference to any payment amount, it must state, if applicable, that the plan contains a balloon payment. (See footnote 10b accompanying § 226.5b(d)(5) for a discussion of when a balloon payment results.)

Under § 226.16(d)(4) of the regulation, if an advertisement states that any interest under the plan may be tax deductible, the advertisement must not be misleading about such deductibility. For example, an advertisement referring to deductibility would not be misleading if it includes a statement that the consumer should consult a tax advisor regarding the deductibility of interest.

Creditors are prohibited by § 226.16(d)(5) from referring to home equity plans as "free money," or from using other misleading terms. For example, an advertisement could not state "no closing costs" if consumers may be required to pay any closing costs, such as recordation fees.

Several commenters asked how this new section relates to the other advertising rules. Advertisements for home equity plans must comply with all provisions in § 226.16, including § 226.16(b), not solely the new § 226.16(d).

Several commenters asked whether an advertisement for a home equity plan would be required to provide information about any "closed-end" (repayment) phase in the ad. Even if an open-end home equity agreement provides for "conversion" to a repayment phase (during which further advances are not permitted), advertisements for such plans are governed exclusively by the requirements of § 226.16, and are not covered by the closed-end advertising rules under § 226.24. Thus, if a creditor states in an advertisement payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

(3) Effective Date

The statute provides that the act and regulations apply to: (1) Any agreement to open a plan which is entered into five months after the regulations become final; and (2) any application to open a plan which is distributed by or received by a creditor five months after regulations become final. Thus, if an application is given to a consumer on or after November 7, 1989, the effective date of the new rules, the § 226.5b disclosures and the brochure must be given to the consumer according to the normal rules. If an application given to the consumer before the effective date is received by the creditor on or after that date, the § 226.5b disclosures and the brochure must be given to the consumer but they may be provided within three business days of receipt of the application. If an application is received by the creditor prior to the effective date, none of the disclosures in § 226.5b or § 226.6(e) or the brochure need to be given to the consumer.

The substantive rules apply to all plans opened on or after the effective date, no matter when the application was provided to the consumer or received by the creditor.

Transition Rules

If a home equity plan is entered into prior to November 7, 1989, § 226.5b does not apply to that plan. Thus neither the substantive limitations nor the disclosure requirements apply to the plan. Furthermore, if an agreement is entered into prior to the effective date, and is renewed by the same consumer (with or without changes in terms) on or after the effective date, the renewed plan also is not subject to the new requirements. (Of course, creditors may have to provide a change in terms notice under § 226.9(c), if applicable.) However, if a line of credit not secured by a consumer's dwelling is entered into prior to the effective date and a security interest in a consumer's dwelling is added to the line on or after the effective date, the substantive provisions in § 226.5b(f)—but not the new disclosure rules—will apply to the plan from that point on.

(4) Disclosure Samples and Model Clauses

The Board is revising Appendix G of the regulation to incorporate disclosure samples and model clauses to assist

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creditors in preparing disclosures.

(A) *Sample forms.* Form G–14A illustrates a variable-rate plan with a 10 year draw period followed by a 5-year repayment period. The payments are based on a constant fraction of the outstanding balance so that, independent of rate changes, payments will vary each month. Accordingly, payments are stated as a range in the minimum payment example. In addition, one payment is shown each year in the historical example and the fact that payments would have varied each year is stated. The monthly payment in the historical example is the first payment that would have been due each year, based on the rate in effect for that year. (This assumption also has been used in calculating the payments in Forms G–14B and G–14C.) The calculations for the disclosures, however, are done using the actual payment computation formula.

Form G–14B illustrates a significantly more complicated plan. Three payment options are available to the consumer during the draw period. Two of these are "interest-only" options and one involves the payment of interest and a fixed portion of the balance. In accord with the rules set forth in the discussion of payment terms under § 226.5b(d)(5), the form uses a representative example of the payment options within the "interest-only" category. Thus the minimum payment example, the "worst case" example and the historical example are based on the monthly interest-only payment option. This option, as well as the fixed portion of the balance option, are both illustrated in the same historical example.

In addition, form G–14B illustrates a plan with an initially discounted rate. Accordingly, the first rate in the historical example is discounted by a representative amount and the initial payments reflect the discount. Also, a different index is used during the repayment period from that used during the draw period, and the last five years of the historical example are based on the second index.

Finally, form G–14B illustrates the optional rule, described in the discussion of § 226.5b(d)(4), regarding the disclosure of possible creditor actions. Rather than just mentioning the possibility of termination, suspension of advances and reduction of the credit limit and indicating that more information is available, the form summarizes the provisions of §§ 226.5b(f)(2) and 226.5b(f)(3)(vi).

Form G–14C illustrates the disclosures that would be provided by a creditor who elected to provide disclosures illustrating the repayment phase of a line at the inception of the repayment phase rather than including them in the original § 226.5b disclosures given when the plan was opened.

(B) *Model clauses.* The Board has included a number of model clauses in Appendix G–15. In these clauses, language that may or may not be applicable is enclosed in brackets. Alternative phrases are enclosed in brackets and separated by slashes. Alternative clauses are separated by the italicized word "or."

(5) Tables of Certain Index Values

To assist creditors in constructing histories of various indices used in their home equity plans, the Board has prepared tables of values for commonly used indices for the years 1974 through 1989. The indices chosen represent those most frequently requested by commenters. January values are shown from 1975 through 1989, while July values are shown for 1974 through 1988 (since July values are not yet available for 1989). Earlier years in which index values are not available are marked "n.a."

Table 1 provides the values for United States Treasury securities adjusted to constant maturities of 1, 2, 3, and 5 years. Weekly average values are provided as of the first week ending in January and in July. Table 2 provides the January and July monthly average values for the Cost of Funds Ratio to 11th Federal Home Loan Bank District Institutions. Table 3 provides the values as of the last business day in January and July for the prime rate as published in the Wall Street Journal's Money Rates table. A single rate is shown except in cases where multiple rates were published. (Where a range of values are provided, creditors may base their disclosures on the high or low value, or an average depending on their method of figuring the rate.) Creditors need not use these tables in constructing their index histories. Moreover, the dates used in these tables were selected merely to provide index values at specific points within each year. Creditors may choose to use the applicable index values in these tables even if index values as of another date are used in their home equity plans.

TABLE 1—CONSTANT MATURITY YIELD ON UNITED STATES TREASURY SECURITIES

Year	1 Year	2 Year	3 Year	5 Year
Average for first week ending in January (percent)				
1975	7.29	n.a.	7.33	7.35
1976	6.18	n.a.	7.12	7.50
1977	5.02	5.53	5.83	6.24
1978	7.03	7.26	7.40	7.59
1979	10.51	9.93	9.58	9.30
1980	12.02	11.39	10.75	10.52
1981	13.86	13.00	12.81	12.54
1982	13.68	13.88	14.09	14.04
1983	8.62	9.35	9.65	10.84
1984	10.02	10.77	11.04	11.50
1985	9.19	10.05	10.58	11.16
1986	7.63	8.01	8.25	8.50
1987	5.97	6.36	6.54	6.79
1988	7.15	7.82	8.08	8.38
1989	9.17	9.28	9.30	9.28
Average for first week ending in July (percent)				
1974	9.04	n.a.	8.46	8.42
1975	6.92	n.a.	7.58	7.87
1976	6.46	7.01	7.27	7.58
1977	5.72	6.07	6.32	6.68
1978	8.34	8.45	8.51	8.50
1979	9.44	8.97	8.78	8.73
1980	8.51	8.94	9.15	9.47
1981	14.94	14.74	14.58	14.28
1982	14.41	14.75	14.81	14.73
1983	9.78	10.29	10.47	10.80
1984	12.17	13.12	13.38	13.67
1985	7.66	8.59	8.98	9.53
1986	6.36	6.78	6.99	7.21
1987	6.71	7.45	7.72	7.96
1988	7.52	8.04	8.21	8.46

TABLE 2—AVERAGE COST OF FUNDS RATIO TO 11TH FHLB DISTRICT INSTITUTIONS

Year	January (percent)	July (percent)
1974		n.a.
1975	n.a.	n.a.
1976	n.a.	n.a.
1977	n.a.	n.a.
1978	n.a.	n.a.
1979	n.a.	n.a.
1980	8.76	9.67
1981	10.45	11.85
1982	11.95	12.23
1983	10.46	9.68
1984	10.03	10.71
1985	10.22	9.37
1986	8.77	8.20
1987	7.40	7.28
1988	7.62	7.59
1989	8.13	

TABLE 3— PRIME RATE AS PUBLISHED IN THE WALL STREET JOURNAL

Year	January (percent)	July (percent)
1974		10.75
1975	9–9.5	7.5
1976	6.75	7–7.25
1977	6.25	6.5–6.75
1978	8	9
1979	11.5–11.75	11.75
1980	15.25	10.75–11
1981	19.5–20	20.5
1982	15.75	15.5

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TABLE 3— PRIME RATE AS PUBLISHED IN THE WALL STREET JOURNAL —Continued

Year	January (percent)	July (percent)
1983	11	10.5
1984	11	13
1985	10.5	9.5
1986	9.5	8
1987	7.5	8.25
1988	8.75	9.5
1989	10.5	

(6) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC, 20551, at (202) 452-3245.

List of Subjects in 12 CFR Part 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Truth in lending.

(7) Text of Revisions

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending Regulation Z (12 CFR Part 226) as follows:

PART 226- -[AMENDED]

1. The authority citation for Part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2. Pub. L. No. 100-583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Pub. L. 100-86, 101 Stat. 552.

Subpart A—General

2. Section 226.1 is amended by revising paragraphs (b) and (d)(2) and adding paragraph (c)(3) to read as follows:

§ 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability.

* * * * *

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. * * * In addition, the regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling, and imposes limitations on home equity plans that are subject to the requirements of § 226.5b. The regulation does not govern charges for consumer credit.

(c) *Coverage.* * * *

(3) In addition, certain requirements of § 226.5b apply to persons who are not creditors but who provide applications for home equity plans to consumers.

(d) *Organization.* * * *

(2) Subpart B contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home equity plans subject to the requirements of §§ 226.5a and 226.5b, respectively.

* * * * *

Subpart B—Open-End Credit

3. Section 226.5 is amended by revising footnote 8 to read as follows:

[8] The disclosures required under § 226.5a for credit and charge card applications and solicitations, the home equity disclosures required under § 226.5b(d), the alternative summary billing rights statement provided for in § 226.9(a)(2), the credit and charge card renewal disclosures required under § 226.9(e), and the disclosures made under § 226.10(b) about payment requirements need not be in a form that the consumer can keep.

3a. Section 226.5 is further amended by adding paragraphs (a)(4) and (b)(4) to read as follows:

§ 226.5—General disclosure requirements.

(a) *Form of disclosures.* * * *

(4) For rules governing the form of disclosures for home equity plans, see § 226.5b(a).

(b) *Time of disclosures.* * * *

(4) *Home equity plans.* Disclosures for home equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

* * * * *

4. Section 226.5a is amended by revising paragraph (a)(3) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) * * *

(3) *Exceptions.* This section does not apply to home equity plans accessible by a credit or charge card that are subject to the requirements of § 226.5b;

* * * * *

5. A new § 226.5b is added to read as follows:

§ 226.5b Requirements for home equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under § 226.14(b).

(a) *Form of disclosures*—(1) *General.* The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees described in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) *Precedence of certain disclosures.* The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(b) *Time of disclosures.* The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer.[10a]

(c) *Duties of third parties.* Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section for a creditor's home equity plan, they also shall provide the disclosures at such time.[10a]

(d) *Content of disclosures.* The creditor shall provide the following disclosures, as applicable:

(1) *Retention of information.* A statement that the consumer should make or otherwise retain a copy of the disclosures.

(2) *Conditions for disclosed terms.* (i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may

[10a] The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

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receive a refund of all fees paid in connection with the application.

(3) *Security interest and risk to home.* A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(4) *Possible actions by creditor.* (i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.

(5) *Payment terms.* The payment terms of the plan, including:

(i) The length of the draw period and any repayment period.

(ii) An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result.[10b]

(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate,[10c] showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit.

If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.

(6) *Annual percentage rate.* For fixed-rate plans, a recent annual percentage rate[10c] imposed under the plan and a statement that the rate does not include costs other than interest.

(7) *Fees imposed by creditor.* An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(8) *Fees imposed by third parties to open a plan.* A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

(9) *Negative amortization.* A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(10) *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

(11) *Tax implications.* A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(12) *Disclosures for variable-rate plans.* For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(e) *Brochure.* The home equity brochure published by the Board or a suitable substitute shall be provided.

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise:

(1) Change the annual percentage rate unless:

(i) Such change is based on an index that is not under the creditor's control; and

(ii) Such index is available to the general public.

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term unless:

(i) There is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) The consumer fails to meet the repayment terms of the agreement for

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[10b] A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

[10c] For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

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any outstanding balance; or

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security.

(3) Change any term, except that a creditor may:

(i) Provide in the initial agreement that specified changes will occur if a specific event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) Make an insignificant change to terms.

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(A) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;

(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) The consumer is in default of any material obligation under the agreement;

(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line;

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice; or

(G) The maximum annual percentage rate is reached.

(g) *Refund of fees.* A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(h) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section.[10d]

* * * * *

6. Section 226.6 is amended by adding paragraph (e) to read as follows:

§ 226.6 Initial disclosure statement.

* * * * *

(e) *Home equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(1) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(2) The payment information described in § 226.5b(d)(5) (i) and (ii) for both the draw period and any repayment period.

(3) A statement that negative amortization may occur as described in § 226.5b(d)(9).

(4) A statement of any transaction requirements as described in § 226.5b(d)(10).

(5) A statement regarding the tax implications as described in § 226.5b(d)(11).

(6) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §§ 226.5b(d)(6) and 226.5b(d)(12)(ii).

(7) The variable-rate disclosures described in § 226.5b(d)(12) (viii), (x), (xi), and (xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

* * * * *

[10d] If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

7. Section 226.9 is amended by adding paragraph (c)(3) to read as follows:

§ 226.9 Subsequent disclosure requirements.

* * * * *

(c) *Change in terms.*

* * * * *

(3) Notice for home equity plans. If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home equity plan pursuant to § 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

* * * * *

8. Section 226.14 is amended by revising paragraph (b) to read as follows:

§ 226.14 Determination of annual percentage rate.

* * * * *

(b) *Annual percentage rate for sections 226.5a and 226.5b disclosures, for initial disclosures and for advertising purposes.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 226.5a, 226.5b, 226.6, and 226.16 shall be computed by multiplying each periodic rate by the number of periods in a year.

* * * * *

9. Section 226.15 is amended by revising footnote 36 to read as follows:

§ 226.15 Right of rescission.

(a) * * *

(3) * * * [36]

10. Section 226.16 is amended by adding paragraph (d) to read as follows:

[36] The term "material disclosures" means the information that must be provided to satisfy the requirements in section 226.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in §226.5b(d)(5)(i) and (ii) that is required under § 226.6(e)(2).

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§ 226.16 Advertising.

* * * * *

(d) *Additional requirements for home equity plans*—(1) Advertisement of terms that require additional disclosures. If any of the terms required to be disclosed under § 226.6(a) or (b) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home equity plan subject to the requirements of § 226.5b, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under section § 226.14(b).

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result.[10b]

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading in this regard.

(5) *Misleading terms.* An advertisement may not refer to a home equity plan as "free money" or contain a similarly misleading term.

* * * * *

11. Appendix G is amended by adding model forms and clauses G–14A, G–14B, G–14C, and G–15 to read as follows:

APPENDIX G—Open-End Model Forms and Clauses

* * * * *

G–14A Home Equity Sample
G–14B Home Equity Sample
G–14C Home Equity Sample (Repayment phase disclosed later)
G–15 Home Equity Model Clauses

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 1, 1989.

William W. Wiles,
Secretary of the Board.

Billing Code 6210–01–M

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G-14A -- Home Equity Sample

IMPORTANT TERMS
of our
HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: To obtain the terms described below, you must submit your application before January 1, 1990.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you have paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees; (2) refuse to make additional extensions of credit; and (3) reduce your credit limit.

If you ask, we will give you more specific information concerning when we can take these actions.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the "draw period"). During the draw period, payments will be due monthly. Your minimum monthly payment will equal the greater of $100 or 1/360th of the outstanding balance plus the finance charges that have accrued on the outstanding balance.

After the draw period ends, you will no longer be able to obtain credit advances and must pay the outstanding balance over 5 years (the "repayment period"). During the repayment period, payments will be due monthly. Your minimum monthly payment will equal 1/60th of the balance that was outstanding at the end of the draw period plus the finance charges that have accrued on the remaining balance.

Minimum Payment Example: If you made only the minimum monthly payments and took no other credit advances, it would take 15 years to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of 12%. During that period, you would make 120 monthly payments varying between $127.78 and $100.00 followed by 60 monthly payments varying between $187.06 and $118.08.

Fees and Charges: To open and maintain a line of credit, you must pay the following fees to us:

- Application fee: $150 (due at application)
- Points: 1% of credit limit (due when account opened)
- Annual maintenance fee: $75 (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between $500 and $900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw and Balance Requirements: The minimum credit advance you can receive is $500. You must maintain an outstanding balance of at least $100.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable-Rate Information: The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the monthly average prime rate charged by banks and is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we will send you.

Rate Changes: The annual percentage rate can change each month. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Except for this 18% "cap," there is no limit on the amount by which the rate can change during any one-year period.

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Maximum Rate and Payment Examples: If you had an outstanding balance of $10,000 during the draw period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $177.78. This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of $10,000 at the beginning of the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $316.67. This annual percentage rate could be reached during the first month of the repayment period.

Historical Example: The following table shows how the annual percentage rate and the minimum monthly payments for a single $10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from September of each year. While only one payment amount per year is shown, payments would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made each month, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

Year	Index (%)	Margin * (%)		ANNUAL PERCENTAGE RATE (%)	Minimum Monthly Payment ($)
1974	12.00	2		14.00	144.44
1975	7.88	2		9.88	106.50
1976	7.00	2		9.00	100.00
1977	7.13	2		9.13	100.00
1978	9.41	2	*Draw Period*	11.41	105.47
1979	12.90	2		14.90	126.16
1980	12.23	2		14.23	117.53
1981	20.08	2		18.00 **	138.07
1982	13.50	2		15.50	117.89
1983	11.00	2		13.00	100.00
1984	12.97	2		14.97	203.81
1985	9.50	2		11.50	170.18
1986	7.50	2	*Repayment Period*	9.50	149.78
1987	8.70	2		10.70	141.50
1988	10.00	2		12.00	130.55

* This is a margin we have used recently.
** This rate reflects the 18% rate cap.

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G-14B -- Home Equity Sample

IMPORTANT TERMS of our HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: All of the terms described below are subject to change.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: We can terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees if:

- You engage in fraud or material misrepresentation in connection with the line.
- You do not meet the repayment terms.
- Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

- The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.
- We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.
- You are in default of a material obligation in the agreement.
- Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.
- A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.
- The maximum annual percentage rate is reached.

The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the "draw period"). You can choose one of three payment options for the draw period:

- *Monthly interest-only payments.* Under this option, your payments will be due monthly and will equal the finance charges that accrued on the outstanding balance during the preceding month.
- *Quarterly interest-only payments.* Under this option, your payments will be due quarterly and will equal the finance charges that accrued on the outstanding balance during the preceding quarter.
- *2% of the balance.* Under this option, your payments will be due monthly and will equal 2% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance during the preceding month.

If the payment determined under any option is less than $50, the minimum payment will equal $50 or the outstanding balance on your line, whichever is less.

Under both the monthly and quarterly interest-only payment options, the minimum payment will not reduce the principal that is outstanding on your line.

After the draw period ends, you will no longer be able to obtain credit advances and must repay the outstanding balance (the "repayment period"). The length of the repayment period will depend on the balance outstanding at the beginning of it. During the repayment period, payments will be due monthly and will equal 3% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance or $50, whichever is greater.

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Minimum Payment Examples: If you took a single $10,000 advance and the ANNUAL PERCENTAGE RATE was 9.52%:

- Under the monthly interest-only payment option, it would take 18 years and 1 month to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments of $79.33, followed by 96 payments varying between $379.33 and $50 and one final payment of $10.75.

- Under the 2% of the balance payment option, it would take 10 years and 8 months to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments varying between $279.33 and $50, followed by 7 payments of $50 and one final payment of $21.53.

Fees and Charges: To open and maintain a line of credit, you must pay us the following fees:

- Application fee: $100 (due at application)
- Points: 1% of credit limit (due when account opened)
- Annual maintenance fee: $50 during the first 3 years, $75 thereafter (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between $500 and $900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw Requirement: The minimum credit advance that you can receive is $200.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable-Rate Feature: The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum monthly payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. During the draw period, the index is the monthly average prime rate charged by banks. During the repayment period, the index is the weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year. Information on these indices is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

The initial annual percentage rate is "discounted" – it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for the first year your credit line is open.

Ask us for the current index values, margin, discount and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

Rate Changes: The annual percentage rate can change monthly. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Apart from this rate "cap," there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Examples: If the ANNUAL PERCENTAGE RATE during the draw period equaled the 18% maximum and you had an outstanding balance of $10,000:

- Under the monthly interest-only payment option, the minimum monthly payment would be $150.

- Under the 2% of the balance payment option, the minimum monthly payment would be $350.

This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of $10,000 during the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $450. This annual percentage rate could be reached during the first month of the repayment period.

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Historical Example: The following table shows how the annual percentage rate and the monthly payments for a single $10,000 credit advance would have changed based on changes in the indices over the past 15 years. For the draw period, the index values for the prime rate are from September of each year. For the repayment period, the index values for the yield on U.S. Treasury securities are from the first week ending in July. While only one payment amount per year is shown, payments under the 2% of the balance payment option and during the repayment period would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the indices or your payments will change in the future.

	Year	Index	Margin*	ANNUAL PERCENTAGE RATE	Monthly Interest-Only Payments	Monthly 2% of Balance Payments
		%	%	%	($)	($)
	1974	12.00	2	10.00 **	83.33	283.33
	1975	7.88	2	9.88	82.33	221.55
	1976	7.00	2	9.00	75.00	169.34
	1977	7.13	2	9.13	76.08	133.41
Draw	1978	9.41	2	11.41	95.08	111.89
Period	1979	12.90	2	14.90	124.17	96.46
	1980	12.23	2	14.23	118.58	74.39
	1981	20.08	2	18.00 ***	150.00	64.13
	1982	13.50	2	15.50	129.17	50.00
	1983	11.00	2	13.00	108.33	50.00
	1984	12.17	2	14.17	418.08	50.00
Repayment	1985	7.66	2	9.66	264.01	
Period	1986	6.36	2	8.36	177.96	
	1987	6.71	2	8.71	124.45	
	1988	7.52	2	9.52	87.92	

* This is a margin we have used recently.
** This rate reflects a 4% "discount" we have used recently.
***This rate reflects the18% rate cap.

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G-14C -- Home Equity Sample (Repayment phase disclosed later)

IMPORTANT TERMS
of our
HOME EQUITY PLAN

This disclosure contains important information about our Home Equity Plan. You should read it carefully and keep a copy for your records.

Security Interest: We have a mortgage in your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: We can terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees if:

- You engage in fraud or material misrepresentation in connection with the plan.
- You do not meet the repayment terms.
- Your action or inaction adversely affects the collateral or our rights in the collateral.

Minimum Payment Requirements: You must pay the balance on your account over 5 years. During that period, your payments will be due monthly. Your minimum monthly payment will equal 1/60th of the original outstanding balance on your line plus finance charges that have accrued on the remaining balance.

Minimum Payment Example: It would take 5 years to pay off a balance of $10,000 at an ANNUAL PERCENTAGE RATE of 12.5%. During that period, you would make 60 monthly payments varying between $270.83 and $168.40.

Fees: You must pay us an initial fee of $100 at the beginning of the repayment period.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the plan.

Variable-Rate Information: The plan has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the highest prime rate published in the *Wall Street Journal* "Money Rates" table. To determine the annual percentage rate that will apply, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate.

Rate Changes: The annual percentage rate can change each month. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Except for this 18% "cap," there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Example: If you had an initial balance of $10,000, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $316.67. This annual percentage rate could be reached during the first month.

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Historical Example: The following table shows how the annual percentage rate and the minimum monthly payments for a starting balance of $10,000 would have changed based on changes in the index over the past 15 years. The index values are from the last business day in January of each year. While only one payment amount per year is shown, payments would have varied during each year. This table does not necessarily indicate how the index or your payments will change in the future.

Year	Index (%)	Margin* (%)	ANNUAL PERCENTAGE RATE (%)	Minimum Payment ($)
1975	9.50	2	11.50	262.50
1976	6.75	2	8.75	225.00
1977	6.25	2	8.25	207.92
1978	8.00	2	10.00	200.00
1979	11.75	2	13.75	189.58
1980	15.25	2	17.25	
1981	20.00	2	18.00 **	
1982	15.75	2	17.75	
1983	11.00	2	13.00	
1984	11.00	2	13.00	
1985	10.50	2	12.50	
1986	9.50	2	11.50	
1987	7.50	2	9.50	
1988	8.75	2	10.75	
1989	10.50	2	12.50	

* This is a margin we have used recently.
** This rate reflects the 18% rate cap.

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G-15 -- Home Equity Model Clauses

(a) Retention of Information: This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

(b) Availability of Terms: To obtain the terms described below, you must submit your application before (*date*). However the (*description of terms*) are subject to change.

or

All of the terms described below are subject to change.

If these terms change [(other than the annual percentage rate)] and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

(c) Security Interest: We will take a [security interest in/ mortgage on] your home. You could lose your home if you do not meet the obligations in your agreement with us.

(d) Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment [, and charge you certain fees]; (2) refuse to make additional extensions of credit; (3) reduce your credit limit [; and (4) make specific changes that are set forth in your agreement with us].

If you ask, we will give you more specific information about when we can take these actions.

or

Possible Actions: We can terminate your account, require you to pay us the entire outstanding balance in one payment[, and charge you certain fees] if:

- You engage in fraud or material misrepresentation in connection with the line.
- You do not meet the repayment terms.
- Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

- The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.
- We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.
- You are in default of a material obligation in the agreement.
- Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.
- A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.
- The maximum annual percentage rate is reached.

[The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.]

(e) Minimum Payment Requirements: The length of the [draw period/repayment period] is (*length*). Payments will be due (*frequency*). Your minimum payment will equal (*how payment determined*).

[The minimum payment will not reduce the principal that is outstanding on your line./The minimum payment will not fully repay the principal that is outstanding on your line.] You will then be required to pay the entire balance in a single "balloon" payment.

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(f) Minimum Payment Example: If you made only the minimum payments and took no other credit advances, it would take (*length of time*) to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of (*recent rate*). During that period, you would make (*number*) (*frequency*) payments of $___.

(g) Fees and Charges: To open and maintain a line of credit, you must pay the following fees to us:

(*Description of fee*) [$___/__% of _____] (*When payable*)

(*Description of fee*) [$___/__% of _____] (*When payable*)

You also must pay certain fees to third parties. These fees generally total [$___/__% of ______/between $___ and $___]. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

(h) Minimum Draw and Balance Requirements: The minimum credit advance you can receive is $___. You must maintain an outstanding balance of at least $___.

(i) Negative Amortization: Under some circumstances, your payments will not cover the finance charges that accrue and "negative amortization" will occur. Negative amortization will increase the amount that you owe us and reduce your equity in your home.

(j) Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

(k) Other Products: If you ask, we will provide you with information on our other available home equity lines.

(l) Variable-Rate Feature: The plan has a variable-rate feature and the annual percentage rate (corresponding to the periodic rate) and the [minimum payment/term of the line] can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the (*identification of index*) and is [published in/available from] (*source of information*). To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

[The initial annual percentage rate is "discounted" -- it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for (*period*).]

Ask us for the current index value, margin, [discount,] and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

(m) Rate Changes: The annual percentage rate can change (*frequency*). [The rate cannot increase by more than __ percentage points in any one year period./There is no limit on the amount by which the rate can change in any one year period.] [The maximum ANNUAL PERCENTAGE RATE that can apply is __%./The ANNUAL PERCENTAGE RATE cannot increase by more than __ percentage points above the initial rate.] [Ask us for the specific rate limitations that will apply to your credit line.]

(n) Maximum Rate and Payment Examples: If you had an outstanding balance of $10,000, the minimum payment at the maximum ANNUAL PERCENTAGE RATE of __% would be $___. This annual percentage rate could be reached (*when maximum rate could be reached*).

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(o) **Historical Example:** The following table shows how the annual percentage rate and the minimum payments for a single $10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from (*when values are measured*). [While only one payment amount per year is shown, payments would have varied during each year.]

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

Year	Index	Margin	ANNUAL PERCENTAGE RATE	Minimum Payment
	(%)	(%)	(%)	($)
1975				
1976				
1977				
1978				
1979				
1980				
1981				
1982				
1983				
1984				
1985				
1986				
1987				
1988				
1989				

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