

H-Cij. No. 10460
June 10, 1991

*To All Depository Institutions in the Second
Federal Reserve District, and Others
Maintaining Sets of Board Regulations:*

Enclosed is a copy of a revised Regulation H pamphlet, "Membership of State Banking Institutions in the Federal Reserve System," effective January 25, 1991, of the Board of Governors of the Federal Reserve System.

The revised pamphlet supersedes the previous printing of this regulation and any subsequent amendments thereto.

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

H- Civ. No. 10460

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

12 CFR 208; as amended effective January 25, 1991



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Regulation H
Membership of Board
Institutions in the Federal Reserve
System



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 1991

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Regulation H

Membership of State Banking Institutions in the Federal Reserve System

12 CFR 208; as amended effective January 25, 1991

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*”

* 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.

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 re-

quired for admission to membership in the Federal Reserve System, is as follows:

	<i>Minimum capital</i>
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*

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.

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

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.

duplicate, with the Federal Reserve Bank of the District in which the applying bank is located.

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

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.

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 condi-

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.

tions 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 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

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.

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.

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" in-

clude every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuer (1) to repay money borrowed by or advanced to or for the account of the account party or (2) to make payment on account of any evidence of indebtedness undertaken by the account party, or (3) to make payment on account of any default by the account party on 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 De-

^{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.

velopment as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or to the maximum limit of coverage made available with respect to the particular type of property under the act, whichever is less. 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 in-

complete 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.

(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 instruc-

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

(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;

(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 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 addition-

al 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 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.

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

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

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

(i) chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The

records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker-dealer or other person from whom purchased or to whom sold;

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

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

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

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

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

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

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

(F) the broker-dealer utilized;

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

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

(3) *Form of notification.* Every state member bank effecting a securities transaction for a customer shall maintain for at least

three years and, except as provided in subparagraph (4), shall mail or otherwise furnish to such customer either of the following types of notifications:

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

(ii) a written notification disclosing:

(A) the name of the bank;

(B) the name of the customer;

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

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

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

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

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

(4) *Time of notification.* The time for mailing or otherwise furnishing the written notification described in 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.

(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).

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 branches⁷ 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

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."

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

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

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(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 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

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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.

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 Affiliates⁹

(a) *Reports of member banks.* (1) Each report of condition made by a member state

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

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bank to its Federal Reserve Bank pursuant to a call therefor by the Board shall be published 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

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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.

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.

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 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.

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.

(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 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, with respect to the ratios relat-

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.

ing capital to total assets, in appendix B to part 208 and in appendix B to the Board's Regulation Y, 12 CFR 225.*

SECTION 208.14—Procedures for Monitoring Bank Secrecy Act Compliance

(a) *Purpose.* This section is 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 record-keeping 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.

* These appendixes 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.

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
 - (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 Bank-

ing 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 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 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 78l(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 78l, 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 promul-

gated 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 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.

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 Non-accrual 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 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.

SECTION 208.18—Appraisal Standards for Federally Related Transactions

The standards applicable to appraisals rendered in connection with federally related transactions entered into by state member banks are set forth in subpart G of the Board's Regulation Y, 12 CFR 225.

SECTION 208.19—Payment of Dividends

(a) *Capital limitations on payment of dividends.* No state member bank shall, during the time it continues its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any

time been sustained by a state member bank that equal or exceed its undivided profits then on hand, no dividend shall be paid. No dividend shall be paid by a state member bank while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts.

(1) *Exceptions.* Exceptions to the limitations contained in this paragraph (a) may be made only with the prior approval of the Board and of at least two-thirds of the shares of each class of stock outstanding.

(2) *Dividends on common and preferred stock.* The provisions of this paragraph (a) shall apply to the payment of dividends on both common and preferred stock.

(3) *"Bad debt."* Under paragraph (a), bad debts must be deducted from the net profits then on hand in computing funds available for the payment of dividends. The term "bad debt" includes matured obligations due a bank on which the interest is past due and unpaid for six months unless the debts are well secured and in the process of collection. Obligations include every type of indebtedness owed to the bank, including, for example, loans, investment securities, time deposits in other depository institutions, and leases. The six-month period of default may begin at any time, regardless of when the debt matures.

(i) *Matured debt.* Whether a debt has matured for the purposes of this subsection usually will be determined by applicable contract law. Generally, a debt is matured when all or a part of the principal is due and payable as a result of demand, arrival of the stated maturity date, or acceleration by contract or by operation of law. Nevertheless, any demand debt on which the payment of interest is six months past due will be considered matured even though payment on the debt has not been demanded. Installment loans on which any payment is six months past due will be considered matured even though acceleration of the total debt may not have occurred.

(ii) *Well-secured debt.* A debt is well secured if it is secured by collateral in the form of liens on, or pledges of, real or

personal property, including securities, having realizable value sufficient to discharge the debt in full, or by the guaranty of a financially responsible party. If a loan that would otherwise be considered a bad debt is partially secured, that portion not properly secured will be considered a bad debt.

(iii) *Debt in process of collection.* A debt is in the process of collection if collection of the debt is proceeding in due course, either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to current status. In any case, the bank should have a plan of collection setting forth the reasons for the selected method of collection, the responsibilities of the bank and the borrower, and the expected date of repayment of the debt or its restoration to current status.

(iv) *Debts of bankrupt or deceased debtors.* A claim duly filed against the estate of a bankrupt or deceased debtor is considered as being in the process of collection. The obligation is well secured if it meets the criteria set forth in paragraph 3(a)(ii) of this section or if the claim of the bank against the estate has been duly filed and the statutory period for filing has expired and the assets of the estate are adequate to discharge all obligations in full.

(v) *Documentation.* The bank must maintain in its files documentation to support its evaluation of the obligation. In addition, the bank must retain, at a minimum, monthly progress reports on its collection efforts, noting and explaining any deviation from the collection plan.

(4) *"Undivided profits then on hand".* For the purpose of this section, the terms "undivided profits then on hand" and "net profits then on hand" shall have the same meaning, and shall be referred to herein as "undivided profits then on hand".

(i) *Allowance for loan and lease losses.* When calculating the amount of divi-

dends a bank can pay under 12 USC 56 and this paragraph, the bank may not add the balance in its allowance for loan and lease losses to its undivided profits for the purpose of determining undivided profits then on hand. The terms "allowance for loan and lease losses" and "undivided profits" shall have the same meaning as set forth in the instructions for the Reports of Condition and Income.

(ii) *Bad debts.* When deducting its bad debts from its undivided profits then on hand, a bank shall first subtract the sum of its bad debts from the balance of its allowance for loan and lease losses account. If the sum of a bank's bad debts is greater than its allowance for loan and lease losses, the excess bad debt shall then be deducted from the bank's undivided profits then on hand.

(iii) *Surplus surplus.* State member banks are required to comply with state law provisions concerning the maintenance of surplus funds in addition to common capital. To the extent a bank has capital surplus in excess of that required under applicable state law, the bank has "surplus surplus." Only that portion of the surplus surplus that meets the following conditions may be transferred to the undivided-profits account and be available for the payment of dividends:

(A) The bank's board of directors approves the transfer of funds from capital surplus to undivided profits; and

(B) The transfer has been approved by the Board. The bank must be able to demonstrate to the Board that the portion of the surplus surplus to be transferred came from the earnings of prior periods, excluding earnings transferred as a result of stock dividends. Requests for Board approval shall be submitted to the appropriate Federal Reserve Bank. The bank may consider the transfer to be approved if the Board or the Reserve Bank does not notify the bank within 30 days after the Reserve Bank's receipt of the notice that the transfer has been disap-

proved or that it is subject to continuing consideration.

(b) *Earnings limitations on payment of dividends.* A state member bank may not pay a dividend if the total of all dividends declared by the bank in any calendar year exceeds the total of its net profits for that year combined with its retained net profits of the preceding two calendar years, less any required transfers to surplus or to a fund for the retirement of any preferred stock, unless the bank has received the prior approval of the Board for the dividend under paragraph (b)(3) of this section.

(1) *Dividends on common and preferred stock.* The provisions of this paragraph (b) apply to the payment of dividends on both preferred and common stock.

(2) *"Net profits."* "Net profits" shall be equal to the net income or loss as reported by a state member bank in its Reports of Condition and Income. When computing its "net profits" under this section, a bank should not add its provisions for loan and lease losses to, nor deduct net charge-offs from, its reported net income.

(3) *Retained net profits.* Retained net profits of any period shall be equal to the net income or loss as reported in the Reports of Condition and Income less any common or preferred stock dividends declared or otherwise charged to the undivided profits of the period for which retained net profits are computed.

(4) *Approval of dividends.* A bank must request and receive the approval of the Board before declaring a dividend if the amount of all dividends (common and preferred), including the proposed dividend, declared by the bank in any calendar year exceeds the total of the bank's net profits of that year to date combined with its retained net profits of the preceding two calendar years, less any required transfers to surplus or a fund for the retirement of any preferred stock. Requests for the Board's approval shall be submitted to the appropriate Federal Reserve Bank.

(5) *Effective date and transition provisions.*

(i) For the purpose of computing "net profits" pursuant to 12 USC 60, a state

member bank must apply paragraph (b)(2) of this section no later than January 1, 1991. A bank may elect to use this paragraph (b)(2) of this section to calculate net profits for 1990, if it applies this provision on a full calendar year to date basis.

(ii) Whether a bank chooses to use paragraph (b)(2) of this section beginning as of January 1, 1990 or 1991, it may elect to apply the paragraph (b)(2) to recalculate retained net profits for one or both of the prior two years.

(iii) Once a bank has elected to calculate net profits or retained net profits for a particular year applying the provisions of paragraph (b)(2) of this section, retained net profits and net profits for all subsequent periods in the calculation must also be calculated using paragraph (b)(2) of this section. If a state member bank has elected to use paragraph (b)(2) of this section for a particular year, the bank may not change the method of calculation used for that year during subsequent periods.

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 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."

APPENDIX B—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

See the Board pamphlet "Capital Adequacy Guidelines."