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REGULATION K, SERIES OF 1927.

(Superseding Regulation K of 1924)

BANKING CORPORATIONS AUTHORIZED TO DO FOREIGN BANKING BUSINESS UNDER THE TERMS OF SECTION 25(a) OF THE FEDERAL RESERVE ACT

SECTION I. ORGANIZATION

Any number of natural persons, not less in any case than five, may form a Corporation* under the provisions of section 25(a) for the purpose of engaging in international or foreign banking or other international or foreign financial operations or in banking or other financial operations in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries or in such dependencies or insular possessions.

SECTION II. ARTICLES OF ASSOCIATION

Any persons desiring to organize a corporation for any of the purposes defined in section 25(a) shall enter into articles of association (see F. R. B. Form 151 which is suggested as a satisfactory form of articles of association) which shall specify in general terms the objects for which the Corporation is formed, and may contain any other provisions not inconsistent with law which the Corporation may see fit to adopt for the regulation of its business and the conduct of its affairs. The articles of association shall be signed by each person intending to participate in the organization of the Corporation and when signed shall be forwarded to the Federal Reserve Board in whose office they shall be filed.

*Whenever these regulations refer to a corporation spelled with a capital C, they relate to a corporation organized under section 25(a) of the Federal reserve act.

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SECTION III. ORGANIZATION CERTIFICATE

All of the persons signing the articles of association shall under their hands make an organization certificate on F. R. B. Form 152, which is made a part of this regulation, and which shall state specifically:

First. The name assumed by the Corporation.

Second. The place or places where its operations are to be carried on.

Third. The place in the United States where its home office is to be located.

Fourth. The amount of its capital stock and the number of shares into which it shall be divided.

Fifth. The names and places of business or residences of persons executing the organization certificate and the number of shares to which each has subscribed.

Sixth. The fact that the certificate is made to enable the persons subscribing the same and all other persons, firms, companies, and corporations who or which may thereafter subscribe to or purchase shares of the capital stock of such Corporation to avail themselves of the advantages of this section.

The persons signing the organization certificate shall acknowledge the execution thereof before a judge of some court of record or notary public who shall certify thereto under the seal of such court or notary. Thereafter the certificate shall be forwarded to the Federal Reserve Board to be filed in its office.

SECTION IV. TITLE

Inasmuch as the name of the Corporation is subject to the approval of the Federal Reserve Board, a preliminary application for that approval should be filed with the Federal Reserve Board on F. R. B. Form 150, which is made a part of this regulation. This application should state merely that the organization of a

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Corporation under the proposed name is contemplated and may request the approval of that name and its reservation for a period of 30 days. No Corporation which issues its own bonds, debentures, or other such obligations will be permitted to have the word "bank" as a part of its title. No Corporation which has the word "Federal" in its title will be permitted also to have the word "bank" as a part of its title. So far as possible the title of the Corporation should indicate the nature or reason of the business contemplated and should in no case resemble the name of any other corporation to the extent that it might result in misleading or deceiving the public as to its identity, purpose, connections, or affiliations.

SECTION V. AUTHORITY TO COMMENCE BUSINESS

After the articles of association and organization certificate have been made and filed with the Federal Reserve Board, and after they have been approved by the Federal Reserve Board and a preliminary permit to begin business has been issued by the Federal Reserve Board, the association shall become and be a body corporate, but none of its powers except such as are incidental and preliminary to its organization shall be exercised until it has been formally authorized by the Federal Reserve Board by a final permit generally to commence business.

Before the Federal Reserve Board will issue its final permit to commence business, the president or cashier, together with at least three of the directors, must certify (a) that each director elected is a citizen of the United States; (b) that a majority of the shares of stock is owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States, or by firms or companies the controlling interest in which is owned by citizens of the United States; and (c) that of the authorized capital stock specified in the articles of association at least 25 per cent has been paid in in cash and that each shareholder has individually paid in in cash at least 25 per cent of his stock subscription. Thereafter the cashier shall certify to the payment of the remaining installments as and when each is paid in, in accordance with law.

SECTION VI. CAPITAL STOCK

No Corporation may be organized under the terms of section 25(a) with a capital stock of less than \$2,000,000. The par value of each share of stock shall be specified in the articles of association, and no Corporation will be permitted to issue stock of no par value. If there is more than one class of stock, the name and amount of each class and the obligations, rights, and privileges attaching thereto shall be set forth fully in the articles of association. Each class of stock shall be so named as to indicate to the investor as nearly as possible what is its character and to put him on notice of any unusual attributes.

SECTION VII. TRANSFERS OF STOCK

Section 25(a) provides in part that--

A majority of the shares of the capital stock of any such corporation shall at all times be held and owned by the citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a State of the United States, or by firms or companies the controlling interest in which is owned by citizens of the United States.

In order to insure compliance at all times with the requirements of this provision after the organization of the Corporation, shares of stock shall be issuable and transferable only on the books of the Corporation. Every application for the issue or transfer of stock shall be accompanied by an affidavit of the party to whom it is desired to issue or transfer stock, or by his or its duly authorized agent, stating--

In the case of an individual.--(a) Whether he is or is not a citizen of the United States and, if a citizen of the United States, whether he is a natural-born citizen or a citizen by naturalization, and if naturalized, whether he remains for any purpose in the allegiance of any foreign sovereign or State; (b) whether there is or is not any arrangement under which he is to hold the shares or any of the shares which he desires to have issued or transferred to him, in trust

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for or in any way under the control of any foreign State or any foreigner, foreign corporation, or any corporation under foreign control; and if so, the nature thereof.

In the case of a corporation.--(a) Whether such corporation is or is not chartered under the laws of the United States or of a State of the United States. If it is not, no further declaration is necessary, but if it is, it must also be stated (b) whether the controlling interest in such corporation is or is not owned by citizens of the United States, and (c) whether there is or is not any arrangement under which such corporation will hold the shares or any of the shares if issued or transferred to such corporation in trust for or in any way under the control of any foreign State or any foreigner or foreign corporation or any corporation under foreign control; and if so, the nature thereof.

In the case of a firm or company.--(a) Whether the controlling interest in such firm or company is or is not owned by citizens of the United States; and, if so, (b) whether there is or is not any arrangement under which such firm or company will hold the shares or any of the shares if issued or transferred to such firm or company in trust for or in any way under the control of any foreign State or any foreigner or foreign corporation or any corporation under foreign control; and if so, the nature thereof.

The Board of directors of the Corporation, whether acting directly or through an agent, may, before making any issue or transfer of stock, require such further evidence as in their discretion they may think necessary in order to determine whether or not the issue or transfer of the stock would result in a violation of the law. No issue or transfer of stock which would cause 50 per cent or more of the total amount of stock issued or outstanding to be held contrary to the provisions of the law or these regulations shall be made upon the books of the Corporation. The decision of the board of directors in each case shall be final and

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conclusive and not subject to any question by any person, firm, or corporation on any ground whatsoever.

If at any time by reason of the fact that the holder of any shares of the Corporation ceases to be a citizen of the United States, or, in the opinion of the board of directors, becomes subject to the control of any foreign State or foreigner or foreign corporation or corporation under foreign control, 50 per cent or more of the total amount of capital stock issued or outstanding is held contrary to the provisions of the law or these regulations, the board of directors may, when apprised of that fact, forthwith serve on the holder of the shares in question a notice in writing requiring such holder within two months to transfer such shares to a citizen of the United States, or to a firm, company, or corporation approved by the board of directors as an eligible stockholder. When such notice has been given by the board of directors the shares of stock so held shall cease to confer any vote until they have been transferred as required above and if on the expiration of two months after such notice the shares shall not have been so transferred, the shares shall be forfeited to the Corporation.

The board of directors shall prescribe in the by-laws of the Corporation appropriate regulations for the registration of the shares of stock in accordance with the terms of the law and these regulations. The by-laws must also provide that the certificates of stock issued by the Corporation shall contain provisions sufficient to put the holder on notice of the terms of the law and the regulations of the Federal Reserve Board defining the limitations upon the rights of transfer.

SECTION VIII. OPERATIONS IN THE UNITED STATES

No Corporation shall carry on any part of its business in the United States except such as shall be incidental to its international or foreign business. Agencies may be established in the United States with the approval of the Federal Reserve Board for specific purposes, but not generally to carry on the business

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of the Corporation.

SECTION IX. INVESTMENTS IN THE STOCK OF OTHER CORPORATIONS

It is contemplated by the law that a Corporation shall conduct its business abroad either directly or indirectly through the ownership or control of corporations, and it is accordingly provided that with the consent of the Federal Reserve Board a Corporation may invest in the stock, or other certificates of ownership, of any^{other} corporation organized--

(a) Under the provisions of section 25(a) of the Federal reserve act;

(b) Under the laws of any foreign country or a colony or dependency thereof;

(c) Under the laws of any State, dependency, or insular possession of the United States;

provided, first, that such other corporation is not engaged in the general business of buying or selling goods, wares, merchandise, or commodities in the United States; and second, that it is not transacting any business in the United States except such as is incidental to its international or foreign business.

Except with the approval of the Federal Reserve Board, no Corporation shall invest an amount in excess of 15 per cent of its capital and surplus in the stock of any corporation engaged in the business of banking, or an amount in excess of 10 per cent of its capital and surplus in the stock of any other kind of corporation.

No Corporation shall purchase any stock in any other corporation organized under the terms of section 25(a) or under the laws of any State, which is in substantial competition therewith, or which holds stock or certificates of ownership in corporations which are in substantial competition with the purchasing Corporation. This restriction, however, does not apply to corporations organized under foreign laws.

SECTION X. BRANCHES

No Corporation shall establish any branches except with the approval of the Federal Reserve Board, and in no case shall any branch be established in the United States.

SECTION XI. ISSUE OF DEBENTURES, BONDS AND PROMISSORY NOTES

A Corporation is not required by law or by this regulation to make application ~~to~~ or obtain the approval of the Federal Reserve Board before making an issue of its debentures, bonds, notes or other obligations, but corporations issuing their debentures, bonds, notes or other obligations must comply with the rules, regulations and conditions hereinafter set forth.

(a) General Conditions. All debentures, bonds, notes or other such obligations issued by a corporation (except notes payable to banks or bankers within one year) shall:

- (1) Be payable only in gold coin of the United States of the standard of weight and fineness existing at the time of issue;
- (2) Be payable not more than twenty years after the date of issue;
- (3) Be secured by collateral which shall:

(a) Consist of lawful money of the United States and/or securities, notes, drafts, bills of exchange, acceptances, including bankers' acceptances, and other evidences of indebtedness and/or shares of stock in which the corporation is authorized by law to invest its funds;

(b) Have an aggregate market value equal at all times to not less than one hundred and ten per cent of the aggregate principal amount of the obligations issued or to be issued against such securities; and

(c) Be transferred and delivered free of any prior lien, charge

or encumbrance thereon of any kind whatsoever, to a financially responsible bank or trust company, which is a member of the Federal Reserve System, as Trustee under a Trust Indenture executed by the Corporation as security for the obligations of the Corporation issued or to be issued thereunder, which Trust Indenture shall prescribe the general form of such obligations and shall require that every such obligation shall be authenticated by the certificate of the Trustee noted thereon.

(b) Requirements after issuance. Within ten days after the issuance of any such debentures, bonds, notes or other obligations (other than promissory notes payable to banks or bankers within one year) the Corporation issuing the same shall file with the Federal Reserve Board:

A. A statement verified by the affidavit of its President or a Vice President and its Treasurer, Cashier or Comptroller setting forth:

- (1) That the requirements of this regulation in respect of the issue of debentures, bonds, notes or other obligations have been complied with in all respects.
- (2) The aggregate amount of the debentures, bonds, notes or obligations issued under the Trust Indenture and the net price received by the Corporation therefor.
- (3) The various items of the collateral security pledged under the Trust Indenture and the market value, at the time of the issue of such obligations, of each and every item thereof.
- (4) The financial condition of the Corporation and, in detail, all its assets and liabilities (fixed and contingent) as of the day immediately following such issue.

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B. A copy of the Trust Indenture pursuant to which such obligations of the Corporation were issued, certified as correct by the Trustee therein named.

C. A certificate of the Trustee under such Trust Indenture setting forth:

- (1) That it has accepted the trust created by such Trust Indenture and is acting as Trustee thereunder;
- (2) The securities and/or cash which have been delivered to it and which it holds as Trustee under the Trust Indenture;
- (3) The name and address of the Counsel for the Trustee.

D. The latest published balance sheet of the Corporation, certified as correct by the President or a Vice President and by the Treasurer, an Assistant Treasurer, the Cashier or Assistant Cashier or the Comptroller of the Corporation.

E. An opinion of the Counsel for the Trustee under the Trust Indenture to the effect that:

- (1) The Trust Indenture has been validly executed in pursuance of due corporate action.
- (2) That all necessary legal formalities have been complied with to make such obligations, when executed by the Corporation and authenticated by the Trustee, valid and enforceable obligations of the Corporation entitled to the benefits afforded by the Trust Indenture;
- (3) That the transfers executed to the Trustee of the collateral security held by it under the Trust Indenture are in appropriate and sufficient form.

F. Copies of all prospectuses and other literature issued by the Corporation or its officers or bankers describing or affecting such issue.

In case there shall be any substitution of or change in the securities at any time held under any such Trust Indenture securing an issue of debentures,

bonds, notes or other obligations the Corporation, each time it makes a report to the Federal Reserve Board pursuant to the provisions of Section XVI, shall file with the Federal Reserve Board a statement, verified by the affidavit of the President or a Vice President and the Treasurer, Cashier or Comptroller of the Corporation

A. Giving the details of such substitution or change, and

B. Certifying that at the time of such substitution or change the additional collateral transferred to the Trustee under the Trust Indenture had a market value at least equal to the market value of the collateral security released from the lien of such Trust Indenture.

Such statement shall be accompanied by an acknowledgment by the Trustee under the Trust Indenture that there has been delivered to it and that it holds as such Trustee the additional collateral specified in such statement.

The Federal Reserve Board reserves the right to make public whenever it believes it to be necessary in the public interest any documents filed with it under this subsection.

(c) Advertisements. No circular, prospectus, letter, advertisement or other statement published or issued in any form or manner by a corporation shall contain any matter to indicate that any issue of debentures, bonds, notes or other obligations by such corporation or the collateral securing same has in any way received the approval of the Federal Reserve Board or that the collateral securing same has been appraised or approved in any way by the Federal Reserve Board. This requirement will be strictly enforced in order that there may be no possibility of the public obtaining the impression that the Federal Reserve Board has approved in any way any such issue of debentures, bonds, notes or other such obligations or the collateral securing same.

SECTION XII. SALE OF SECURITIES WITH GUARANTY OR INDORSEMENT 888

Whenever a corporation sells, discounts or negotiates with its indorsement or guaranty any securities, notes, drafts, bills of exchange, acceptances, bankers' acceptances or other evidence of indebtedness it shall enter on its books a proper record thereof, describing in detail each such evidence of indebtedness so sold, discounted or negotiated, the amount thereof, the parties thereto, the maturity thereof, and the nature of the corporation's liability thereon. Every financial statement of the corporation submitted to the Federal Reserve Board or made public in any way shall show the aggregate amount of all such liabilities outstanding as of the date on which such statement purports to show the financial condition of the corporation.

SECTION XIII. ACCEPTANCES

Kinds.--Any Corporation may accept (1) drafts and bills of exchange drawn upon it which grow out of transactions involving the importation or exportation of goods, and (2) drafts and bills of exchange which are drawn by banks or bankers located in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in such countries, dependencies, and possessions, provided, however, that, no Corporation shall exercise its power to accept drafts or bills of exchange if at the time such drafts or bills are presented for acceptance it has outstanding any debentures, bonds, notes, or other such obligations issued by it.

Maturity.--No Corporation shall accept any draft or bill of exchange which grows out of a transaction involving the importation or exportation of goods with a maturity in excess of six months, or shall accept any draft or bill of exchange drawn for the purpose of furnishing dollar exchange with a maturity in excess of three months.

Limitations.--(1) Individual drawers: No acceptances shall be made for

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the account of any one drawer in an amount aggregating at any time in excess of 10 per cent of the subscribed capital and surplus of the Corporation, unless the transaction be fully secured or represents an exportation or importation of commodities and is guaranteed by a bank or banker of undoubted solvency. (2) **Aggregates:** Whenever the aggregate of acceptances outstanding at any time (a) exceeds the amount of the subscribed capital and surplus, 50 per cent of all the acceptances in excess of the amount shall be fully secured; or (b) exceeds twice the amount of the subscribed capital and surplus, all the acceptances outstanding in excess of such amount shall be fully secured. (The Corporation shall elect whichever requirement (a) or (b) calls for the smaller amount of secured acceptances.) In no event shall any Corporation have outstanding at any one time acceptances drawn for the purpose of furnishing dollar exchange in an amount aggregating more than 50 per cent of its subscribed capital and surplus.

Reserves.--Against all acceptances outstanding which mature in 30 days or less a reserve of at least 15 per cent shall be maintained, and against all acceptances outstanding which mature in more than 30 days a reserve of at least 3 per cent shall be maintained. Reserves against acceptances must be in liquid assets of any or all of the following kinds: (1) Cash; (2) balances with other banks; (3) acceptances of other banks or bankers, and (4) obligations of the Government of the United States.

SECTION XIV. DEPOSITS

In the United States.--No Corporation shall receive in the United States any deposits except such as are incidental to or for the purpose of carrying out transactions in foreign countries or dependencies of the United States where the Corporation has established agencies, branches, correspondents, or where it operates through the ownership or control of subsidiary corporations. Deposits of this character may be made by individuals, firms, banks, or other corporations,

whether foreign or domestic, and may be time deposits or on demand.

Outside the United States.--Outside the United States a Corporation may receive deposits of any kind from individuals, firms, banks, or other corporations, provided, however, that if such corporation has any of its bonds, debentures, or other such obligations outstanding it may receive abroad only such deposits as are incidental to the conduct of its exchange, discount, or loan operations.

Reserves.--Against all deposits received in the United States a reserve of not less than 13 per cent must be maintained. This reserve may consist of cash in vault, a balance with the Federal reserve bank of the district in which the head office of the Corporation is located, or a balance with any member bank. Against all deposits received abroad the Corporation shall maintain such reserves as may be required by local laws and by the dictates of sound business judgment and banking principles.

SECTION XV. GENERAL LIMITATIONS AND RESTRICTIONS

Liabilities of one borrower.--The total liabilities to a Corporation of any person, company, firm, or corporation for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed 10 per cent of the amount of its subscribed capital and surplus: Provided, however, That the discount of bills of exchange drawn in good faith against actually existing values and the discount of commercial or business paper actually owned by the person negotiating the same, and the purchase of readily marketable bonds, notes, and other investment securities offered for sale in the open market, shall not be considered as money borrowed within the meaning of this paragraph. The liability of a customer on account of an acceptance made by the Corporation for his account is not a liability for money borrowed within the meaning of this paragraph unless and until he fails to place the Corporation in funds to cover the payment of the acceptance at maturity or unless the Corporation

itself holds the acceptance.

Aggregate liabilities of the Corporation.--The aggregate of the Corporation's liabilities outstanding on account of acceptances, average domestic and foreign deposits, debentures, bonds, notes, guaranties, indorsements, and other such obligations shall not exceed at any one time ten times the amount of the Corporation's subscribed capital and surplus. In determining the amount of the liabilities within the meaning of this paragraph, indorsements of bills of exchange having not more than six months to run, drawn and accepted by others than the Corporation, shall not be included.

Operations abroad.--Except as otherwise provided in the law and these regulations, a Corporation may exercise abroad not only the powers specifically set forth in the law but also such incidental powers as may be usual in the determination of the Federal Reserve Board in connection with the transaction of the business of banking or other financial operations in the countries in which it shall transact business. In the exercise of any of these powers abroad a Corporation must be guided by the laws of the country in which it is operating and by sound business judgment and banking principles.

SECTION XVI. REPORTS AND EXAMINATIONS

Reports.--Each Corporation shall make at least two reports annually to the Federal Reserve Board at such times and in such form as it may require.

Examinations.--Each Corporation shall be examined at least once a year by examiners appointed by the Federal Reserve Board. The cost of examinations shall be paid by the Corporation examined.

SECTION XVII. AMENDMENTS TO REGULATIONS

These regulations are subject to amendment by the Federal Reserve Board from time to time, provided, however, that no such amendment shall prejudice obligations undertaken in good faith under regulations in effect at the time they