FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 250

[Regulation H; Docket No. R–0964]

Membership of State Banking Institutions in the Federal Reserve System; Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing to amend Subpart A of Regulation H, regarding the general provisions for membership in the Federal Reserve System, and Subpart E of Regulation H, regarding Interpretations, in order to reduce regulatory burden and simplify and update requirements. The proposal would also eliminate several obsolete interpretations. The Board is also reissuing existing Subparts B and C. Existing Subparts B and C would not be significantly amended but would be relettered (as Subparts D and E, respectively) to reflect the fact that existing Subpart A would be broken into four new Subparts (Subparts A, B, C and F). Existing Subpart D, regarding safety and soundness standards, would be incorporated into proposed Subpart A. The proposal would not amend in any way Appendices A through E to Part 208. This proposal to modernize Subpart A of Regulation H is in accordance with the Board's policy of reviewing its regulations as well as the Board's review of regulations under section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

DATES: Comments must be received by May 30, 1997.

ADDRESSES: Comments, which should refer to Docket No. R–0964, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board of Governors' Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Jean Anderson, Staff Attorney, Legal Division (202/452–3707). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

As part of its policy of reviewing its regulations, and consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), Pub. L. 103–328, the Board of Governors of the Federal Reserve System (Board) is proposing to amend Subpart A of Regulation H, regarding the general provisions for state bank membership in the Federal Reserve System (12 CFR part 208). Section 303 of the Riegle Act requires each Federal banking agency to review and streamline its regulations and written policies to improve efficiency, reduce unnecessary costs, and remove inconsistencies and outmoded and duplicative requirements. The proposed amendments are designed to reduce regulatory burden and simplify and update the Regulation.

The principal proposed amendments are described below. In general, the amendments serve to reorganize, clarify, and reduce the burden of compliance with Subpart A of Regulation H. The amendments delete application procedures no longer in effect, reflect the requirements of the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) in branch applications, provide for expedited procedures in certain membership and branch applications, and eliminate provisions that no longer have a significant effect. The Board also proposes to eliminate a number of interpretations in Regulation H and elsewhere; specifically, interpretations: 12 CFR 208.125, 208.126, 208.127, 208.128, 250.120, 250.121, 250.122, 250.123, 250.140, 250.161, 250.162, 250.220, 250.300, 250.301 and 250.302. The amended Regulation H, when fully effective, will replace the existing Regulation H in its entirety, except for the Appendices to Regulation H, which will remain unchanged by the proposal.

The Board is not proposing to modify substantively existing Subparts B and C of Regulation H. However, existing Subparts B and C would be reissued and relettered (Subparts D and E, respectively) to reflect the fact that Subpart A, as proposed, would be broken into four new Subparts (Subpart A, B, C, and F). In addition, a cross-reference to real estate appraisal standards in Regulation Y (Part 225—Bank Holding Companies and Change in Bank Control) would be moved from existing § 208.18 to proposed § 208.50 (Purpose and Scope), within proposed Subpart E, which would be renamed ''Real Estate Lending and Appraisal Standards.'' Existing Subpart D would be incorporated into Subpart A at proposed § 208.3(e), entitled ''Conditions of membership.'' The Board is proposing to amend existing Subpart E, which lists interpretations of Regulation H, in order to eliminate unnecessary or outdated interpretations and to incorporate certain interpretations, where noted, into the regulatory language of Subpart A of Regulation H. Existing Subpart E would be relettered as Subpart G. As noted above, a number of miscellaneous interpretations would also be deleted.

Subpart A—General Membership and Branching Requirements

Section 208.2 Definitions

The definitions would be rearranged and placed in alphabetical order. The definition of *branch* would be taken out of footnote seven of existing § 208.9 and added to the definition section. The definition section would also include a proposed definition of *capital stock and surplus.* The Board is proposing to formalize in § 208.6 its expedited branch application procedures. Consequently, a definition of *eligible bank* is proposed for purposes of determining which banks may utilize the expedited branch application procedures. The definition of *eligible bank* would also be used for purposes of determining which banks may utilize the Board's newly proposed expedited membership procedures.

Definition of Branch

Section 9(3) of the Federal Reserve Act (12 U.S.C. 321) in essence provides that State member banks may establish domestic branches on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks. The definition of branch incorporates this concept by providing that a branch includes any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money. A branch may include a temporary, seasonal, or mobile facility.

For purposes of this definition, the Board is proposing that a branch not include a loan origination facility where the proceeds of loans are not disbursed. In addition, pursuant to section 2204 of the Economic Growth and Regulatory

Paperwork Reduction Act of 1996, Pub. L. 104–208, 110 Stat. 3009, (Economic Growth Act), the definition excludes automated teller machines and remote service units as well as offices of an affiliated depository institution that provide services to customers of a State member bank on behalf of the State member bank. The Board seeks comment on whether it also would be appropriate to exclude from the definition of branch an office of an unaffiliated depository institution that provides services to customers of the State member bank on behalf of the State member bank.

The proposal also excludes from the definition of branch a facility that would otherwise qualify as a branch because it engages in one or more of these branching functions (receipt of deposits, payment of withdrawals, or making loans) but which prohibits access to members of the public for purposes of conducting one or more branching functions. For example, an office that receives deposits only through the mail (which does not offer a means to attract customers to the bank or provide in-person contact with the public) would be excluded. This exclusion is consistent with existing Board interpretations.

The Office of the Comptroller of the Currency (OCC) has also stated that it will decide on a case by case basis whether to treat as a branch a facility that generally provides services, on a nondiscriminatory basis, to accounts that its customers hold as well as accounts held by noncustomers in other banks and depository institutions. (Before the passage of the Economic Growth Act that excludes ATMs from the definition of a branch, an example of such a facility would have been ATMs that are linked to networks and thus provide services to bank customers and non-customers alike.) The Board would also consider on a case-by-case basis, based on the particular circumstances involved, whether such facilities constitute branches.

Definition of Capital Stock and Surplus

The Federal Reserve Act and the current version of Regulation H contain various references to a State member bank's ''capital.'' For example, the guidelines for determining the capital adequacy of State member banks for risk-based capital purposes and for leverage purposes are set out in appendices A and B to Regulation H, respectively (these measures would not change under the proposal). The Federal Reserve Act contains other references to a State member bank's *capital stock and surplus* (or similar terms) in numerous provisions, such as those related to purchases of investment securities (12 U.S.C. 335), loans on stock or bond collateral (12 U.S.C. 248(m)), deposits with nonmember banks (12 U.S.C. 463), bank acceptances (12 U.S.C. 372 and 373), and limits on the amount of paper of one borrower that may be discounted by a Federal Reserve Bank for any member bank (12 U.S.C. 330 and 345). The Board has issued interpretations on how to define ''capital stock and surplus'' for some of these purposes (12 CFR 250.161 and 250.162).

The Board is proposing to define *capital stock and surplus* in Regulation H to mean Tier 1 and Tier 2 capital, as calculated under the risk-based capital guidelines, plus any allowance for loan and lease losses not already included in Tier 2 capital. This definition would apply to all references to capital stock and surplus in the Federal Reserve Act and Regulation H, unless otherwise noted. The new definition would mirror the definition of capital stock and surplus that the Board adopted in April 1996 for purposes of section 23A of the Federal Reserve Act (which governs transactions between insured depository institutions and their affiliates). This definition is also used for purposes of Regulation O (12 CFR 215) (which governs insider lending) and the OCC's limits on loans by a national bank to a single borrower.[1] The Board proposes to rescind its current capital-related interpretations (12 CFR 250.161 and 250.162).

Definition of Eligible Bank

The proposal incorporates a new definition, *eligible bank*, to serve as the qualification for expedited treatment of membership and branch applications. Under the proposal, an eligible bank is a bank that: 1. is well capitalized; 2. has a Uniform Financial Institutions Rating System (CAMELS) rating of 1 or 2; 3. has a Community Reinvestment Act rating of ''Outstanding'' or ''Satisfactory;'' 4. has a compliance rating of 1 or 2; and 5. has no major unresolved supervisory issues outstanding as determined by the Board or the appropriate Federal Reserve Bank. The Board has long used similar criteria for expedited processing of branch applications. The proposal would incorporate these criteria into Regulation H and would expand the use to qualification for expedited processing of membership applications. The proposed definition of *eligible bank* is consistent with the definition of eligible bank adopted by the OCC.

[1] The proposed definition of capital stock and surplus would not apply to part 209 of this title (Regulation I).

Definition of Mutual Savings Bank and State Bank

The Board proposes deleting the definition of a mutual savings bank as unnecessary. The Board is proposing to amend the definition of state bank in order to track more closely the definition of state bank provided in Section 9 of the Federal Reserve Act.

Section 208.3 Application and Conditions for Membership in Federal Reserve System

Eligibility Requirements

The proposal eliminates existing § 208.2, entitled ''Eligibility Requirements,'' since its provisions have been incorporated into the factors considered in approving applications for membership. The proposal eliminates existing § 208.2(b), regarding minimum capital required for membership by national banks, and replaces it with a cross-reference to the statutory requirements applicable to national banks.

In addition, the proposal eliminates existing § 208.3, ''Insurance of Deposits.'' Existing § 208.3 reflects prior law that accorded insured bank status under the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 264, 1728, 1811 to 1831) to an uninsured bank upon becoming a State member bank. Under the Federal Deposit Insurance Act, banks must apply separately to the Federal Deposit Insurance Corporation for insured bank status.

Applications for Membership and Stock

The proposal amends existing § 208.4, entitled ''Application for membership,'' by summarizing in a more succinct fashion the Board's application procedures. It also provides a cross-reference to the Board's Rules of Procedure (12 CFR 262.3), which govern the submission of such applications. Existing § 208.5(b), which covers procedures for the payment for and issuance of Federal Reserve Bank stock to State member banks on approval of membership applications, duplicates Regulation I and, therefore is deleted. A proposed revision of Regulation I (12 CFR part 209) is published elsewhere in today's **Federal Register**.

Public comment on membership applications (including conversions) is not expressly required by statute and, since membership does not confer deposit insurance, the CRA does not, by its terms, apply to membership applications (state or national charters confer deposit-taking ability not Federal Reserve membership). Although the publication requirement imposes a

burden on prospective member banks, it may also lead to the Board obtaining additional information or views relevant to a membership application. Therefore, the Board solicits comment on whether publication should be required for membership applications.

If the Board determines publication is not necessary for membership applications, the final rule would provide that membership applications would be acted on promptly after receipt of the application.

Factors Considered in Approving Applications for Membership

The matters given special consideration in membership applications would be modified to reflect that insurance coverage under the Federal Deposit Insurance Act is no longer a requirement for membership. In addition, the membership considerations would be modified to clarify that the capital necessary for membership is that required under proposed § 208.4. If the proposed changes are adopted, the Board would change its Rules Regarding Delegation of Authority (Delegation Rules), at 12 CFR 265.11(e)(1), to reflect the changes to Regulation H since the Delegation Rules also list the factors the Board takes into consideration in approving membership applications.

Expedited Membership Approval for Eligible Banks and Bank Holding Companies

The Board's proposal would provide expedited treatment for membership applications from *de novo* state banks that are sponsored by bank holding companies that meet the criteria for expedited processing under § 225.14(c) of Regulation Y (12 CFR 225.14(c)). In addition, the Board's proposal would grant expedited treatment to state non-member banks applying for membership and national banks seeking to convert to State member banks if the applying bank is an *eligible bank*.[2]

An application for membership by an eligible bank would be deemed approved by the Board or the appropriate Reserve Bank five business days after the close of the public comment period, unless the Board or the appropriate Reserve Bank notifies the bank that the application is approved prior to that date (but in no case will an application be approved before the third day after the close of the public comment period) or that the bank is not eligible for expedited processing because: 1. The bank will offer banking services that are materially different from those presently offered by the bank, or those offered by affiliates in the case of membership applications by *de novo* banks; or 2. The existing bank is not an eligible bank or the bank holding company is not eligible for expedited treatment under § 225.14(c) of Regulation Y; or 3. The application contains a material error or is otherwise deficient; or 4. The application or notice required under the Board's Rules of Procedure (12 CFR 262.3), raises significant supervisory, Community Reinvestment Act, compliance, policy, or legal issues that have not been resolved, or a timely substantive adverse comment is submitted. If the proposed changes are adopted, the Board will amend it's Rules of Procedure accordingly.

If the Board determines publication is not necessary for membership applications, the final rule would provide that expedited membership applications are deemed approved 30 days after receipt of the application, unless the applicant is notified it is not eligible for expedited review.[3]

In addition, the Board will be eliminating the pre-acceptance period from its internal processing of all membership applications, which will generally reduce processing times. The Board believes that the expedited application procedures, by establishing criteria which, if met, presume approval, will provide greater assurance of the timing and outcome of membership applications. The Board solicits comments on the benefits of the proposed expedited membership application procedure.

Conditions of Membership

A new § 208.3(d) would combine and condense former §§ 208.6 and 208.7 concerning the general conditions and requirements of membership. The former requirement that the capital and surplus of a State member bank be adequate in relation to its existing and prospective deposit liabilities has been modified and placed in proposed § 208.4. Proposed § 208.3(d) would also incorporate the provisions of existing Subpart D, ''Standards for Safety and Soundness.''

Existing § 208.6(a), which points out that State member banks retain all charter and statutory rights under state law not preempted by Federal law, and § 208.6(b), which states that State member banks are entitled to all the privileges of membership afforded them under the Federal Reserve Act and other acts of Congress, and must observe all requirements of Federal law, would be deleted, as the Board believes these propositions to be self-evident and, therefore, do not need to be explicitly stated.

Existing § 208.7(b) requires specific notification to the appropriate Reserve Bank in the event a State member bank acquires the assets of another institution through merger, consolidation, or purchase, because the acquisition may result in a change in the general character of the bank's business or in the scope of its corporate powers. The Board proposes to delete this provision because the Bank Merger Act (12 U.S.C. 1828(c)) already requires an application under these circumstances. Filing an application under the Bank Merger Act (12 U.S.C. 1828(c)) fulfills the requirement to notify the appropriate Reserve Bank of any change requiring such a filing.

Waivers of Conditions of Membership

Existing § 208.8(b) provides for waivers of conditions contained within existing § 208.8 and existing § 208.10, provides for waivers of reports of affiliates. The proposal would provide for a waiver of any condition of membership upon a showing of good cause and for an automatic waiver of the requirement to file reports of affiliates, unless such reports are specifically requested by the Board.

Voluntary Withdrawal From Membership

The provisions of existing § 208.11, as they relate to the effective date of withdrawal from membership, would be moved to proposed § 208.3(f). The provisions in existing § 208.11, which relate to surrendering Reserve Bank stock, are duplicative of Regulation I (12 CFR part 209) and therefore would be eliminated, and instead, proposed § 208.3(f) would cross-reference Regulation I.

Section 208.4 Capital Adequacy

Existing § 208.13, entitled ''Capital adequacy,'' and other provisions concerning capital requirements, would be moved to proposed § 208.4. The substance of existing requirements would not change but the language would be amended to provide greater clarity to State member banks regarding

[2] The OCC provides expedited treatment for *de novo* national bank charters for affiliates of lead banks that are eligible national banks (12 CFR 5.20(j)) as well as for eligible State member banks seeking to convert to national banks 12 CFR 5.24(d)(4)).

[3] In addition, if publication for membership applications is retained, the Board will be proposing amendments to its Rules of Procedure in the future to allow banks to submit membership applications within 15 days of publication, rather than the current 7 day requirement. This would provide greater consistency in the processing procedures under Regulation H and Regulation Y (12 CFR part 225).

their ongoing obligation to ensure that the bank's capital is adequate. The Board will be considering streamlining amendments to Appendices A and B separately from this proposal.

Section 208.5 Dividends and Other Distributions

Proposed § 208.5 revises the existing provisions concerning payment of dividends and withdrawal of capital, currently found at § 208.19, in order to clarify the application of these requirements to State member banks. The interpretations currently found at § 208.125 through § 208.127 would be incorporated into proposed § 208.5.

Section 208.6 Establishment and Maintenance of Branches

The proposal would restructure existing § 208.9 and replace it with proposed new § 208.6 which is designed to improve clarity and provide more streamlined procedures.

Branching

Existing § 208.9(a) states that State member banks may establish domestic branches subject to the same limitations and restrictions as applied to national banks, unless restrained by State law, and contains a detailed summary of geographic restrictions on branching within a State, which generally restrict national banks to the same rules as those that apply to State banks under state law. Statewide branching is now permitted in many States under State law; interstate branching through acquisition is now permitted for national banks except in a few States which have opted out; and interstate branching *de novo* is now permitted in States in which out-of-state banks generally are permitted to establish branches. Rather than summarizing the underlying statutes, proposed § 208.6(a)(1) provides cross-references to the statutes governing branching.

Branch Applications Generally

Proposed § 208.6(a)(2) contains a condensed version of existing § 208.9(e), which refers State member banks to the Board's Regulation K (12 CFR part 211) for matters related to branches in foreign countries, their dependencies and possessions, dependencies and possessions of the United States, and the Commonwealth of Puerto Rico. For matters related to domestic branch applications, proposed § 208.6(a)(2) contains a cross-reference to the Board's Rules of Procedure (12 CFR 262.3) which govern the submission of domestic branch applications. The Board is requesting comment on whether it should shorten the public comment period applicable to branch applications from the 30 days that is currently required to 15 days.[4]

Proposed § 208.6(b) modifies the Board's requirements for approving branch applications currently contained within the Board's Delegation Rules (12 CFR 265.11(e)(3)). Proposed § 208.6(b) eliminates consideration of factors found at § 265.11(e)(3)(iv), regarding the competitive situation and § 265.11(e)(3)(v), regarding the branch's prospects for profitable operation, and adds to the factors for consideration the bank's performance under the CRA in cases where the bank is establishing a branch with deposit-taking ability. If the proposed changes are adopted the Board will amend its Delegation Rules accordingly.

Expedited Branch Applications

Existing § 208.9(b) would be replaced by proposed § 208.6(c), which sets forth the Board's expedited procedures for eligible banks establishing branches.[5] Under the proposed procedures, which modify slightly the Board's existing procedures, located in Administrative Letter 92–82 (November 5, 1992), a branch application by an eligible bank would be deemed approved by the Board or the appropriate Reserve Bank five business days after the close of the public comment period, unless the Board or the appropriate Reserve Bank notifies the bank that the application is approved prior to that date (but in no case will an application be approved before the third day after the close of the public comment period) or that the bank is not eligible for expedited processing because: (1) It is not an eligible bank; (2) The application contains a material error or is otherwise deficient; or (3) The application or notice required under the Board's Rules of Procedure (12 CFR 262.3), raises significant supervisory, Community Reinvestment Act, compliance, policy or legal issues that have not been resolved, or a timely substantive adverse comment is submitted. If the proposed changes are adopted the Board will amend its Rules of Procedure accordingly.

Consolidated Branch Applications

Proposed § 208.6(d) would authorize explicitly a single consolidated application for branches that a State member bank plans to establish in a one-year period. At present, such an application is permissible because the Board's branch approvals are valid for one year, provided the bank notifies the appropriate Reserve Bank before opening any branch covered by the approval. Moreover, there is no requirement that a particular branch be opened once it is approved. Under the proposal to codify such procedures, approvals would remain valid for one year unless the Board notifies the bank of the approval's suspension as a result of a change in the bank's condition.

Branch Closings

Proposed § 208.6(e) is a new section requiring branch closings to comply with section 42 of the FDI Act (12 U.S.C. 1831r–1), which requires notice to both customers and, in the case of insured State member banks, the Board, of proposed branch closings. A branch relocation is not a closing for purposes of § 42(e) of the FDI Act. Under section 42(e) of the FDI Act, a branch relocation is a movement that occurs within the immediate neighborhood and that does not substantially affect the nature of the business or customers served.

Branch Relocations

Currently § 208.9(b)(7) of Regulation H states that no branch application is required for a relocation of an existing branch. A branch relocation, for purposes of filing a branch application, is a movement that does not substantially affect the nature of the branch's business or customers served. Proposed § 208.6(f) would continue this standard.

Section 208.7 Prohibition Against Using Interstate Branches Primarily for Deposit Production

The proposal includes a place holder for existing § 208.28. The Board requested public comment on existing § 208.28 on March 17, 1997 (62 FR 12730). Existing § 208.28 will be incorporated at proposed § 208.7 once it is finalized.

Subpart B Investments and Loans

Section 208.21 Investments in Premises and Securities

A new proposed § 208.21, entitled ''Investments in Premises and Securities,'' would be created to provide guidance to State member banks with regard to investments in bank premises and securities. Existing interpretation § 208.124, entitled, ''Purchase of investment company stock by a State member bank,'' would remain as an interpretation of Regulation H but would be renumbered as § 208.102 and entitled ''Investments in Shares of an Investment Company.''

[4] The Board could shorten the comment period either by amending Regulation H or by amending the Board's Rules of Procedure.

[5] The Board's Rules of Procedure (12 CFR part 262) set forth general procedures for applications at 12 CFR 262.3.

Existing interpretation 12 CFR 208.128, entitled ''Commodity- or equity-linked transactions,'' would be eliminated under the proposal. Since the adoption of the interpretation found at § 208.128, in which the Board determined that certain commodity- and equity-linked transactions constituted a change in the nature of a bank's business for which Board approval was required under Regulation H, more comprehensive examination guidance and procedures have been developed to address trading activities and market risk. For this reason, the Board no longer believes it is necessary to treat commodity- and equity-linked transactions differently from transactions involving interest rate or foreign exchange risk.

Section 208.22 Community Development and Public Welfare Investments

Section 208.21 of Regulation H (proposed to be renumbered as § 208.22, within proposed Subpart B) contains limitations and procedures regarding public welfare investments by State member banks. Among other things, the regulation sets out the conditions under which a State member bank may make public welfare investments without prior Board approval. One of those conditions is that any investment in a particular project may not exceed 2 percent of the bank's capital stock and surplus. The Board is proposing to eliminate the 2 percent limit. (The OCC eliminated a similar 2 percent limit for national banks, 61 FR 49654, September 23, 1996.) The aggregate public welfare investments of a State member bank would continue to be limited to 5 percent of the bank's capital stock and surplus.

In addition, to make a public welfare investment without prior approval, a State member bank must have an overall rating of ''at least satisfactory'' as of its most recent consumer compliance examination. The term ''at least satisfactory'' equates to a rating of ''1'' or ''2'' in the consumer compliance examination rating system. The Board is proposing to substitute the numerical ratings for the term ''at least satisfactory.''

The final paragraph of the public welfare investment section sets out procedures regarding preexisting public welfare investments as of the effective date of the rule (January 9, 1995). The latest date for complying with any action required by this paragraph was January 9, 1996. As this paragraph is now obsolete, the Board is proposing to delete it.

Finally, as discussed above, the Board is proposing to define ''capital stock and surplus'' for purposes of Regulation H. The proposed definition would also apply to the capital limitations associated with public welfare investments.

Section 208.23 Agricultural Loan Loss Amortization

Proposed § 208.23 would have a sunset date of January 1, 1999, because the enabling statute provides that banks may only use this amortization provision through 1998.[6] Because the terms of proposed § 208.23 expire on January 1, 1999, banks are no longer able to establish new capital restoration plans. Since the terms of § 208.23 apply only to existing capital restoration plans, proposed § 208.23 eliminates all references relating to establishing new capital restoration plans, such as the requirements for submitting proposals to establish capital restoration plans and the eligibility requirements for establishing plans.

Section 208.24 Letters of Credit and Acceptances

The proposal does not substantively amend existing § 208.8(d), entitled ''Letters of credit and acceptances.''

Section 208.25 Loans in Areas having Special Flood Hazards

Existing § 208.23, relating to loans by State member banks in identified flood hazard areas, was recently amended by the Board and issued as a joint final rule on August 16, 1996.[7] The current proposal does not propose to modify the language of the flood insurance provisions. The sample form of notice included in the final rule will be located at the end of Subpart B as Appendix A to proposed § 208.25.

Subpart C Bank Securities and Securities-Related Activities

Section 208.31 State Member Banks as Transfer Agents

Current § 208.8(f) would be revised and replaced by proposed § 208.31. Proposed § 208.31 incorporates by reference the rules of the Securities and Exchange Commission (SEC) prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (12 CFR 240.17Ac2–1). Although section 17(a)(d)(1) of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 78q-l(d)(1)) generally subjects all transfer agents to SEC rules, section 17A(c) (15 U.S.C. 78q-1(c)) provides that transfer agents shall register with their appropriate regulatory agencies. Current § 208.8(f) sets forth procedural requirements for State member banks that register as transfer agents, which are virtually identical to the SEC's registration rules. Because the Board does not need to maintain separate procedures, the proposal incorporates, by reference, the SEC's rule, substituting the ''Board'' for the ''SEC'' or ''Commission.'' The proposal also clarifies that State member bank transfer agents must comply with the SEC's rules prescribing operational and reporting requirements applicable to all transfer agents (17 CFR 240.17Ac2–2 and 240.17Ad-1 *et seq.*), adopted by the SEC pursuant to section 17A of the 1934 Act (15 U.S.C. 78q-1).

Section 208.32 Notice of Disciplinary Sanctions Imposed by Registered Clearing Agency

Existing § 208.8(g) is renumbered as proposed § 208.32, with minor clarifications and subheadings added. The 1934 Act requires the registration of clearing agencies and authorizes a registered clearing agency to deny participation in the clearing agency or to impose certain disciplinary sanctions upon participants, including limiting access to the clearing agency's services. 15 U.S.C. 78q-1(b)(3)(G) and (b)(5)(C). Proposed § 208.32 covers notices by registered clearing agencies of such adverse actions. The Board considered incorporating the SEC's regulations by reference but decided instead to retain its existing regulation because it is limited to State member banks and their subsidiaries, which makes it simpler and clearer than the corresponding SEC rule.

Section 208.33 Application for Stay or Review of Disciplinary Sanctions Imposed by Registered Clearing Agency

Under the proposal, § 208.8(h) and § 208.8(i) would be revised and replaced by proposed § 208.33. The resulting new section would incorporate, by reference, the SEC's rules regarding applications by persons for whom the SEC is the appropriate regulatory agency for stays and reviews of disciplinary sanctions, thereby making these rules applicable to such applications by State member banks and their subsidiaries. Persons aggrieved by clearing agency action that denies them participation in the

[6] The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) have adopted this same sunset date for their agricultural loan loss rules (60 FR 27401, May 24, 1995)(OCC); (61 FR 33842, July 1, 1996)(FDIC).

[7] 61 FR 45683 (August 29, 1996). The final rule, which became effective October 1, 1996, replaced the provisions of § 208.8(e) with a new § 208.23 (now proposed § 208.25).

clearing agency or imposes certain disciplinary sanctions upon participants, including limiting access to the clearing agency's services, may request a stay of such action or appeal such action to the appropriate regulatory agency. The Board is the appropriate regulatory agency with respect to State member banks that are clearing agencies. The Board's current rules on stays in § 208.8(h) and on review in § 208.8(i) are virtually identical to the SEC's rules. Therefore, the Board does not need to maintain separate rules. The proposal simply incorporates the SEC's rules, with the Board substituted for the SEC.

Section 208.34 Recordkeeping and Confirmation of Certain Securities Transactions Effected by State Member Banks

The proposal includes a place holder for existing § 208.24 at proposed new § 208.34. Existing § 208.24 was issued as a final rule on March 5, 1997 (62 FR 9909), with an effective date of April 1, 1997. The text of existing § 208.24 will be incorporated in its entirety at § 208.34 when this proposal is issued as a final rule.

Section 208.35 Qualification Requirements for the Recommendation or Sale of Certain Securities

The proposal includes a place holder for proposed new § 208.35. The Board is seeking public comment on proposed § 208.35 separately from this proposal.

Section 208.36 Reporting Requirements for State Member Banks Subject to the Securities Exchange Act of 1934

Existing § 208.16 has not been substantively modified but has been moved to proposed § 208.36.

Section 208.37 Government Securities Sales Practices

The proposal includes a place holder for § 208.25 at proposed § 208.37. Section 208.25 was issued as a final rule on March 19, 1997 (62 FR 13276). The text of existing § 208.25 will be incorporated in its entirety at § 208.37 when this proposal is issued as a final rule.

Subpart D Prompt Corrective Action

The proposal does not significantly amend the terms of existing Subpart B other than to redesignate it as Subpart D and to amend § 208.41 to provide the Federal Reserve with the option of using period-end total assets rather than average total assets for purposes of defining total assets. This option will allow the use, in certain circumstances, of a definition of *total assets* that more accurately reflects the true asset base of an institution for determining whether it is critically undercapitalized. This should be helpful in working with banks with rapidly shrinking asset bases.

Subpart E Real Estate Lending and Appraisal Standards

The proposal does not substantively amend the terms of existing Subpart C but merely redesignates Subpart C as Subpart E. In addition, existing § 208.18 of existing Subpart A would not be substantively amended but would be added to proposed Subpart E as new § 208.50, entitled ''Real Estate Lending and Appraisal Standards.''

Subpart F Miscellaneous Requirements

Section 208.61 Bank Security Procedures

Regulation P (12 CFR part 216), as amended by the Board on May 1, 1991, is proposed to be incorporated into Regulation H at § 208.61. A proposed rule to remove 12 CFR part 216 is found elsewhere in today's **Federal Register**.

Section 208.62 Suspicious Activity Reports

Existing § 208.20 was amended by the Board and was issued as a final rule on February 5, 1996; therefore, it would not be amended substantively by this proposal but would be moved to new § 208.62.

Section 208.63 Procedures for Monitoring Bank Secrecy Act Compliance

Existing § 208.14 is not being substantively amended under the proposal, but is being redesignated as § 208.63.

Section 208.64 Frequency of examination

The proposal includes a place holder for existing § 208.26. The Board issued existing § 208.26 as an interim rule with request for public comment on February 12, 1997 (62 FR 6449). Existing § 208.26 will be incorporated in its entirety at proposed § 208.64 once it is finalized.

Subpart G Interpretations

The proposal eliminates interpretations 208.125–208.128, reletters existing Subpart E as Subpart G, and renumbers the remaining interpretations. In addition, the Board is seeking comment as to whether it should amend proposed interpretation § 208.102, entitled ''Investments in Shares of an Investment Company,'' to provide for an alternative limit for diversified investment companies. The Board is seeking comment on whether, like the OCC, it should allow a bank to elect not to combine its pro rata interest in a particular security in an investment company with the bank's direct holdings of that security if: (1) The investment company's holdings of the securities of any one issuer do not exceed 5 percent of its total portfolio; and (2) if the bank's total holdings of the investment company's shares do not exceed the most stringent investment limitation that would apply to any of the securities in the company's portfolio if those securities were purchased directly by the bank.

The proposal also deletes three miscellaneous interpretations (12 CFR 250.300–250.302) under the Bank Service Company Act (12 U.S.C. 1861 *et seq.*). The Board believes that these interpretations are no longer necessary because the substance of the interpretations is now covered by the express requirements of the Bank Service Company Act.

In addition, the proposal includes a place holder for § 208.129, an interpretation, entitled ''Obligations concerning institutional customers.'' Section 208.129 was issued as a final rule on March 19, 1997 (62 FR 13276). The text of existing § 208.129 will be incorporated in its entirety at § 208.103 when this proposal is issued as a final rule.

Sections Proposed To Be Eliminated

Banking Practices

Existing § 208.8 is proposed to be eliminated in its current form. The parts of existing § 208.8 that address the requirements of State member banks as transfer agents (existing § 208.8(f)) and registered clearing agencies (existing § 208.8(g)–(i)), along with the corresponding recordkeeping rules (existing § 208.8(k)), would be amended (except for 208.8(g)) and relocated to proposed Subpart C, entitled ''Bank Securities and Securities Related Activities.'' Existing § 208.8(j), relating to municipal securities dealers, would be deleted in its entirety. This amendment is described in greater detail below. The requirements for letters of credit and acceptances, existing § 208.8(d), would not be significantly amended but would be moved to proposed new § 208.24, entitled ''Letters of Credit and Acceptances,'' located within proposed Subpart B, entitled ''Investments and Loans.''

The general requirements of existing § 208.8(a), which requires State member banks to conduct their business in a safe and sound manner, would be amended to provide greater clarity and moved to

proposed new § 208.3(e), entitled ''Conditions of Membership.'' Existing § 208.8(b), which addresses the conditions under which the Board will waive conditions of membership, is proposed to be relocated to new § 208.3(f). Existing § 208.8(c) is proposed to be eliminated. It states the general requirement that banks shall not engage in unsafe or unsound practices, which is proposed to be incorporated in new § 208.3(e). Existing § 208.8(c) also states the Board's authority to designate practices as unsafe or unsound in the future. The Board considers it unnecessary to state that Regulation H does not limit in any way the Board's enforcement authority.

Board Forms

Existing § 208.12, making all forms referred to in existing Regulation H a part of the regulation, would be deleted. The proposal would eliminate most references to specific forms.

Disclosure of Financial Condition

Existing § 208.17 requires a State member bank to: 1. Make year-end Call Reports or other alternative information available to shareholders, customers, and the general public upon request; 2. furnish a written announcement to shareholders advising them of the availability of this information; and 3. use reasonable means at their disposal to inform the public of the availability of this information. The Board previously indicated in the Joint Report to Congress on Streamlining Regulatory Requirements (September 23, 1996) that it would reconsider the need for this provision when Call Reports, or other financial information on State member banks, become more readily available electronically. Since summary financial information derived from Call Reports is now available through the Internet (from the FDIC for all insured depository institutions, including State member banks[8]), the Board is requesting comment as to whether existing § 208.17 should be eliminated.

If the Board chooses not to eliminate § 208.17, the Board would amend the language of § 208.17 to provide greater clarity as to the information that must be disclosed to the public by State member banks and to incorporate in Regulation K the portions of existing § 208.17 that relate to foreign banks or state licensed branches of foreign banks.

Municipal Securities Dealers

Existing § 208.8(j) would be deleted under the proposal. Section 15B(b) of the 1934 Act (15 U.S.C. 78o–4(b)) creates the Municipal Securities Rulemaking Board (MSRB) and requires MSRB regulations to mandate standards of training, experience, competence, and other qualifications for municipal securities brokers and dealers and any natural persons associated with them. The MSRB has issued Rule G–7 (Information Concerning Associated Persons) requiring principals and representatives associated with bank municipal securities dealers to file Form MSD–4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) with the dealer. In turn, the dealer shall verify the accuracy and completeness of such form and file it with the appropriate regulatory authority. If a principal or representative is terminated, the broker or dealer must file Form MSD–5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) with the appropriate regulatory authority.

Section 208.8(j) contains a Board rule virtually identical to the MSRB rule in these matters. As such, it is duplicative and unnecessary, and the Board proposes to remove it. The Board notes that section 15B(a) of the 1934 Act (15 U.S.C. 78o–4(a)) and the rules of the SEC thereunder (17 CFR 240.15Ba2–1) similarly require municipal securities dealers that are banks, or separately identifiable departments or divisions of banks (as defined by the MSRB), to register with the SEC on Form MSD. The Board has never found a need to duplicate these SEC regulations, and proposes to follow the same approach for principals and representatives as for dealers.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. The initial regulatory flexibility analysis (5 U.S.C. 603(b)) requires an agency to describe the reasons why the proposed rule is being considered and a statement of the objectives of, and legal basis for, the proposed rule. The ''Supplementary Information,'' above, contains this information. The proposed rules require no additional reporting or recordkeeping requirements and do not overlap with other federal rules.

The initial regulatory flexibility analysis also requires a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposal will apply to all depository institutions regardless of size. The proposal will apply to all State member banks, which numbered 1,021 as of September 30, 1996.

The Board expects that the proposed changes will reduce regulatory filings, reduce the paperwork burden and processing time associated with regulatory filings, reduce the costs associated with complying with regulation, and improve the ability of banks to conduct business on a more cost-efficient basis. For example, the proposal is generally designed to reduce burden by removing out-dated material and by re-organizing the remaining material so it is easier to locate and to read.

The proposal also seeks to reduce burden by incorporating expedited procedures for membership and branch applications for certain banks and by reducing the processing period for expedited applications from 5 to 3 days after the close of the public comment period. In addition, the proposal expands the circumstances under which the Board will consider waivers of conditions of membership, eliminates existing requirements regarding disclosure of financial condition, and eliminates the requirement that banks obtain deposit insurance in order to become State member banks. The proposal also provides for an alternate definition of *total assets* for institutions with rapidly declining asset bases. The Board invites public comment on whether the proposal serves to reduce regulatory burden.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0046, 7100–0091, 7100–0097, 7100–0112, 7100–0139, 7100–0196, 7100–0212, 7100–0250, 7100–0261, 7100–0264, 7100–0278, or 7100–0280), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR part 208.

[8] Additionally, the Board anticipates that more comprehensive public Call Report data will become available through the Internet in the future.

The respondents and recordkeepers are state member banks.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless they display currently valid OMB control numbers.

The following table shows the current Regulation H burden by Federal Reserve report, along with a notation on whether and how the burden might be affected by the proposed changes. Based on an hourly cost of $20 for the H reports, the FR 2230, and the FR 4004, and $30 for the remaining FR reports, the annual cost to the public is estimated to be $5,378,650. The Federal Reserve believes that the proposed changes would result in a net decrease in annual burden for this regulation of less than 100 hours.

BURDEN FOR REGULATION H: STATE MEMBER BANKS (SMBS)

Report	OMB No. (7100–_____)	Report name	Annual burden hours	Burden type	Effect of proposed Reg H changes on burden
H1	0091	Securities Activities of SMBs	2,835	Reporting	None.
H2	0280	Loans Secured by Real Estate in Flood Hazard Areas.	17,172	Reporting	None.
			8,586	Disclosure	None.
			1,042	Recordkeeping	None.
H3	0196	Securities Transactions made Pursuant to Section 208.8(k)(2,3,&5).	165,520	Recordkeeping and disclosure.	None.
H4	0250	Real Estate Appraisal Standards for Federally Related Transactions.	[1] 29,710	Recordkeeping	None.
H5	0261	Real Estate Lending Standards	39,000	Recordkeeping	None.
H6	0278	Public Welfare Investments of SMBs	118	Recordkeeping and disclosure.	No effect on burden/respondent. Total burden would increase by an estimated 10% resulting from the proposal to liberalize the limitation on a project's value as a percent of capital & surplus.
FR 2083	0046	Membership Application	1,988	Reporting	Minimal burden reduction from broadened authority of Board to grant waivers.
FR 2230	0212	Suspicious Activity Report	[2] 7,200	Reporting and recordkeeping.	None.
FR 4001	0097	Domestic Branch Notification	415	Reporting	Burden reduction estimated at 20% if branch applications are no longer required for ATMs, remote service units, offices of affiliated depository institutions, or for loan origination facilities where the proceeds of the loan are not disbursed. Also, fewer notifications may be submitted, for 2 reasons: the clarification of the interpretation of ''relocation,'' and the single notification for all branches SMBs plan to establish in a 1-year period.
FR 4004	0112	Written Security Program for SMBs	484	Recordkeeping	No effect on the burden for this information collection; however, burden would be transferred from Regulation P.
FR 4014	0139	Investment in Bank Premises	75	Reporting	None.
FR 4031	0264	Branch Closing Notification	612	Reporting	None.
			307	Disclosure	None.
			280	Recordkeeping	None.
Total			275,344		

[1] 8250 hours (27.8%) of this burden is attributable to Regulation Y.

[2] In addition to the burden for SMBs and their nonbank affiliates, the burden for this report includes burden for Edge corporations (Regulation K), bank holding companies and their nonbank subsidiaries (Regulation Y), and branches, agencies, and nonbank subsidiaries of foreign banks (Regulation K).

No issues of confidentiality under the provisions of the Freedom of Information Act normally arise for any of these information collections other than for FR 2230; however, that report is not affected by these proposed changes.

Comments are invited on: a. whether the collections of information are necessary for the proper performance of the Federal Reserve's functions;

including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collections, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DERIVATION TABLE

[This table directs readers to the provision(s) of existing Regulation H, if any, upon which the proposed provision is based.]

Revised provision	Original provision
208.1	None.
208.2	208.1.
208.3(a)	208.2.
208.3(b)	208.4, 208.5.
208.3(c)	208.5.
208.3(d)	Added.
208.3(e)	208.7.
208.3(f)	208.10.
208.3(g)	208.11.
208.4	208.13.
208.5	208.19.
208.6(a)	208.9.
208.6(b)	None.
208.6(c)	None.
208.6(d)	None.
208.6(e)	208.9(b)(7).
208.6(f)	None.
208.7	208.28.
208.20	None.
208.21	None.
208.22	208.21.
208.23	208.15.
208.24	208.8(d).
208.25	208.23.
208.30	None.
208.31	208.8(f).
208.32	208.8(h), 208.8(i).
208.33	208.8(g).
208.34	208.24.
208.35	None.
208.36	208.16.
208.37	208.25.
208.40	208.30.
208.41	208.31.
208.42	208.32.
208.43	208.33.
208.44	208.34.
208.45	208.35.
208.50	208.51.
208.51	208.52.
208.60	None.
208.61	None.
208.62	208.20.
208.63	208.14.
208.64	208.26.
208.100	208.116.
208.101	None.
208.102	208.124.
208.103	208.129.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831o, 1831p–1, 1831r–1, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. The table of contents to part 208 is revised to read as follows:

Subpart A—General Membership and Branching Requirements

Sec.
208.1 Authority, purpose, and scope.
208.2 Definitions.
208.3 Application and conditions for membership in the Federal Reserve System.
208.4 Capital adequacy.
208.5 Dividends and other distributions.
208.6 Establishment and maintenance of branches.
208.7 Prohibition against use of interstate branches primarily for deposit production. [Reserved]

Subpart B—Investments and Loans

208.20 Authority, purpose, and scope.
208.21 Investments in premises and securities.
208.22 Community development and public welfare investments.
208.23 Agricultural loan loss amortization.
208.24 Letters of credit and acceptances.
208.25 Loans in areas having special flood hazards.

Subpart C—Bank Securities and Securities-Related Activities

208.30 Authority, purpose, and scope.
208.31 State member banks as transfer agents.
208.32 Notice of disciplinary sanctions imposed by registered clearing agency.
208.33 Application for stay or review of disciplinary sanctions imposed by registered clearing agency.
208.34 Recordkeeping and confirmation of certain securities transactions effected by State member banks. [Reserved]
208.35 Qualification requirements for transactions in certain securities. [Reserved]
208.36 Reporting requirements for State member banks subject to the Securities Exchange Act of 1934.
208.37 Government securities sales practices. [Reserved]

Subpart D—Prompt Corrective Action

208.40 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.
208.41 Definitions for purposes of this subpart.
208.42 Notice of capital category.
208.43 Capital measures and capital category definitions.
208.44 Capital restoration plans.
208.45 Mandatory and discretionary supervisory actions under section 38.

Subpart E—Real Estate Lending and Appraisal Standards

208.50 Authority, purpose, and scope.
208.51 Real estate lending standards.

Subpart F—Miscellaneous Requirements

208.60 Authority, purpose, and scope.
208.61 Bank security procedures.
208.62 Suspicious activity reports.
208.63 Procedures for monitoring Bank Secrecy Act compliance.
208.64 Frequency of examination. [Reserved]

Subpart G—Interpretations

208.100 Sale of bank's money orders off premises as establishment of branch office.
208.101 Investments in Federal Agricultural Mortgage Corporation (Farmer Mac) stock.
208.102 Investments in shares of an investment company.
208.103 Obligations concerning institutional customers. [Reserved]

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

Appendix C to Part 208—Interagency Guidelines for Real Estate Lending Policies

Appendix D to Part 208—Interagency Guidelines Establishing Standards for Safety and Soundness

Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks; Market Risk Measure

3. Subparts A through E are revised and subparts F and G are added to read as follows:

Subpart A—General Membership and Branching Requirements

§ 208.1 Authority, purpose, and scope.

(a) *Authority.* Subpart A of Regulation H (12 CFR part 208, Subpart A) is issued by the Board of Governors of the Federal Reserve System (Board) under 12 U.S.C. 24, 36; sections 9, 11, 21, 25 and 25A of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), 481–486, 601 and 611); sections 1814, 1816, 1818, 1820(d)(8), 1831o, 1831p–1, 1831r–1 and 1835a of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p–1, 1831r–1, and 1835); and 12 U.S.C. 3906–3909.

(b) *Purpose and Scope.* (1) The requirements of this part 208 govern State member banks and state banks eligible for admission to membership in the Federal Reserve System (System) under section 9 of the Federal Reserve Act (Act). This part 208 does not govern banks eligible for membership under section 2 or 19 of the Act.[1] Any bank desiring to be admitted to the System under the provisions of section 2 or 19 should communicate with the Federal Reserve Bank with which it desires to do business.

(2) This subpart A describes the eligibility requirements for membership of state-chartered banking institutions in the System, the general conditions imposed upon members, including capital and dividend requirements, as well as the requirements for establishing and maintaining branches.

§ 208.2 Definitions.

For the purposes of this part:

(a) *Board of Directors* means the governing board of any institution performing the usual functions of a board of directors.

(b) *Board* means the Board of Governors of the Federal Reserve System.

(c) *Branch* (1) Branch includes any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money. A branch may include a temporary, seasonal, or mobile facility that meets these criteria.

(2) *Branch* does not include:

(i) A loan origination facility where the proceeds of loans are not disbursed;

(ii) An office of an affiliated depository institution that provides services to customers of the member bank on behalf of the member bank;

(iii) An automated teller machine;

(iv) A remote service unit;

(v) A facility to which the bank does not permit members of the public to have physical access for purposes of making deposits, paying checks, or borrowing money (such as an office established by the bank that receives deposits only through the mail); or

(vi) A facility that is located at the site of, or is an extension of, an approved main office or branch. The Board determines whether a facility is an extension of an existing main or branch office on a case-by-case basis.

(d) *Capital stock and surplus* means, unless otherwise provided in this part, or by statute, Tier 1 and Tier 2 capital included in a member bank's risk-based capital (under the guidelines in appendix A of this part) and the balance of a member bank's allowance for loan and lease losses not included in its Tier 2 capital for calculation of risk-based capital, based on the bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 324.

(e) *Eligible bank* means a member bank that:

(1) Is well-capitalized as defined in Subpart D of this part;

(2) Has a composite Uniform Financial Institutions Rating System (CAMELS) rating of 1 or 2;

(3) Has a Community Reinvestment Act (CRA) (12 U.S.C. 2906) rating of ''Outstanding'' or ''Satisfactory;''

(4) Has a compliance rating of 1 or 2; and

(5) Has no major unresolved supervisory issues outstanding (as determined by the Board and appropriate Federal Reserve Bank in its discretion).

(f) *State bank* means any bank incorporated by special law of any State, or organized under the general laws of any State, or of the United States, including a Morris Plan bank, or other incorporated banking institution engaged in a similar business.

(g) *State member bank or member bank* means a state bank that is a member of the Federal Reserve System.

§ 208.3 Application and conditions for membership in the Federal Reserve System.

(a) *Applications for membership and stock*—(1) State banks applying for membership in the Federal Reserve System shall file with the appropriate Federal Reserve Bank an application for membership in the Federal Reserve System and for stock in the Reserve Bank[2] in accordance with the Rules of Procedure governing such applications, located at 12 CFR 262.3.

(2) *Board approval.* If an applying bank conforms to all the requirements of the Federal Reserve Act and this section, and is otherwise qualified for membership, the Board may approve its application subject to such conditions as the Board may prescribe.

(3) *Effective date of membership.* A State bank becomes a member of the Federal Reserve System on the date its Federal Reserve Bank stock is credited to its account (or its deposit is accepted, if it is a mutual savings bank not authorized to purchase Reserve Bank stock) in accordance with the Board's Regulation I (12 CFR part 209).

(b) *Factors considered in approving applications for membership.* Factors given special consideration by the Board in passing upon an application are:

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

(2) *Capital.* The adequacy of the bank's capital in accordance with § 208.4, and its future earnings prospects.

(3) *Convenience and needs.* The convenience and needs of the community.

(4) *Corporate powers.* Whether the bank's corporate powers are consistent with the purposes of the Federal Reserve Act.

(c) *Expedited approval for eligible banks and bank holding companies*—(1) *Availability of expedited treatment.* The expedited membership procedures described in paragraph (c)(2) of this section are available to:

(i) An existing state bank seeking membership, or national bank converting to a state bank and seeking membership, if the existing bank is an eligible bank; and to

(ii) A *de novo* state bank seeking membership if the bank holding company meets the criteria for expedited processing under § 225.14(c) of Regulation Y (12 CFR 225.14(c)).

(2) *Expedited procedures.* The membership application of a bank will be deemed approved on the fifth day after the close of the comment period, required by the Board's Rules of Procedure (12 CFR 262.3), unless the Board or the appropriate Federal Reserve Bank notifies the bank that the

[1] Under section 2 of the Federal Reserve Act, every national bank in any state shall, upon commencing business, or within 90 days after admission into the Union of the State in which it is located, become a member of the System. Under 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 of the States of the United States and the District of Columbia, are not required to become members of the System but may, with the consent of the board, become members of the System.

[2] A mutual savings bank not authorized to purchase Federal Reserve Bank stock may apply for membership evidenced initially by a deposit, but if the laws under which the bank is organized are not amended at the first session of the legislature after its admission to authorize the purchase, or if the bank fails to purchase the stock within six months of the amendment, its membership shall be terminated.

application is approved prior to that date or that it is not eligible for expedited review for any reason, including, without limitation, that:

(i) The bank will offer banking services that are materially different from those currently offered by the bank, or by the affiliates of the proposed bank;

(ii) The bank is not an eligible bank under § 208.2(e) or the Bank Holding Company does not meet the criteria for expedited processing under 12 CFR 225.14(c);

(iii) The application contains a material error or is otherwise deficient; or

(iv) The application or notice required under the Board's Rules of Procedure (12 CFR 262.3), raises significant supervisory, Community Reinvestment Act, compliance, policy or legal issues that have not been resolved, or a timely substantive adverse comment is submitted.

(d) *Conditions of membership*—(1) *Safety and soundness.* (i) Each member bank shall at all times conduct its business and exercise its powers with due regard to safety and soundness. (The Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), as set forth as appendix D to this part apply to all member banks.)

(2) *General character of bank's business.* A member bank may not, without the permission of the Board, cause or permit any change in the general character of its business or in the scope of the corporate powers it exercises at the time of admission to membership.

(3) *Compliance with conditions of membership.* Each member bank shall comply at all times with this Regulation H (12 CFR part 208) and any other conditions of membership prescribed by the Board.

(e) *Waivers*—(1) *Conditions of membership.* A member bank may petition the Board to waive a condition of membership. The Board may grant a waiver of a condition of membership upon a showing of good cause and, in its discretion, may limit, among other items, the scope, duration, and timing of the waiver.

(2) *Reports of affiliates.* Pursuant to section 21 of the Federal Reserve Act (12 U.S.C. 486), the Board waives the requirement for the submission of reports of affiliates of member banks, unless such reports are specifically requested by the Board.

(f) *Voluntary withdrawal from membership.* Voluntary withdrawal from membership becomes effective upon cancellation of the Federal Reserve Bank stock held by the member bank, and after the bank has made due provision to pay any indebtedness due or to become due to the Federal Reserve Bank in accordance with the Board's Regulation I (12 CFR part 209).

§ 208.4 Capital adequacy.

(a) *Adequacy.* A member bank's capital, as defined in Section II of Appendix A to this part, shall be at all times adequate in relation to the character and condition of its assets and to its existing and prospective liabilities and other corporate responsibilities. If at any time, in light of all the circumstances, the bank's capital appears inadequate in relation to its assets, liabilities, and responsibilities, the bank shall increase the amount of its capital, within such period as the Board deems reasonable, to an amount which, in the judgement of the Board, shall be adequate.

(b) *Standards for evaluating capital adequacy.* Standards and guidelines by which the Board evaluates the capital adequacy of member banks include those in appendices A and E to this part for risk-based capital purposes and appendix B to this part for leverage measurement purposes.

§ 208.5 Dividends and other distributions.

(a) *Definitions.* For the purposes of this section:

(1) *Capital surplus* means the total of surplus as reportable in the bank's Reports of Condition and Income and surplus on perpetual preferred stock.

(2) *Permanent capital* means the total of the bank's perpetual preferred stock and related surplus, common stock and surplus, and minority interest in consolidated subsidiaries, as reportable in the Reports of Condition and Income.

(b) *Limitations.* The limitations in this section on the payment of dividends and withdrawal of capital apply to all cash and property dividends or distributions on common or preferred stock. The limitations do not apply to dividends paid in the form of common stock.

(c) *Earnings limitations on payment of dividends.* (1) A member bank may not declare or pay a dividend if the total of all dividends declared during the calendar year, including the proposed dividend, exceeds the sum of the bank's net income (as reportable in its Reports of Condition and Income) during the current calendar year and the retained net income of the prior two calendar years, unless the dividend has been approved by the Board.

(2) ''Retained net income'' is equal to the bank's reported net income, less any dividends declared during the period. The bank's net income during the current year and its retained net income from the prior two calendar years is reduced by any net losses incurred in the current or prior two years and any required transfers to surplus or to a fund for the retirement of preferred stock.[3]

(d) *Limitation on withdrawal of capital by dividend or otherwise.* (1) A member bank may not declare or pay a dividend if the dividend would exceed the bank's undivided profits as reportable on its Reports of Condition and Income, unless the bank has received the prior approval of the Board and of at least two-thirds of the shareholders of each class of stock outstanding.

(2) A member bank may not permit any portion of its permanent capital to be withdrawn unless the withdrawal has been approved by the Board and by at least two-thirds of the shareholders of each class of stock outstanding.

(3) If a member bank has capital surplus in excess of that required by law, the excess amount may be transferred to the bank's undivided profits account and be available for the payment of dividends if:

(i) The amount transferred came from the earnings of prior periods, excluding earnings transferred as a result of stock dividends;

(ii) The bank's board of directors approves the transfer of funds; and

(iii) The transfer has been approved by the Board.

(e) *Payment of capital distributions.* All member banks also are subject to the restrictions on payment of capital distributions contained in subpart D of this part.

(f) *Compliance.* A member bank shall use the date a dividend is declared to determine compliance with this section.

§ 208.6 Establishment and maintenance of branches.

(a) *Branching.* (1) To the extent authorized by state law, a member bank may establish and maintain branches (including inter-state branches) subject to the same limitations and restrictions that apply to the establishment and maintenance of national bank branches (12 U.S.C. 36 and 1831u), except that approval of such branches shall be

[3] State member banks are required to comply with state law provisions concerning the maintenance of surplus funds in addition to common capital. Where the surplus of a State member bank is less than what applicable state law requires the bank to maintain relative to its capital stock account, the bank may be required to transfer amounts from its undivided profits account to surplus.

obtained from the Board rather than from the Comptroller of the Currency.

(2) *Branch applications.* A State member bank wishing to establish a branch in the United States or its territories must file an application in accordance with the Board's Rules of Procedure (12 CFR 262.3). Branches of member banks located in foreign nations, in the overseas territories, dependencies, and insular possessions of those nations and of the United States, and in the Commonwealth of Puerto Rico, are subject to 12 CFR part 211 (Regulation K).

(b) *Factors considered in approving domestic branch applications.* Factors given special consideration by the Board in passing upon a branch application are:

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

(2) *Capital.* The adequacy of the bank's capital in accordance with § 208.4, and its future earnings prospects;

(3) *Convenience and needs.* The convenience and needs of the community to be served by the branch;

(4) *CRA performance.* In the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*); and

(5) *Investment in bank premises.* Whether the bank's investment in bank premises in establishing the branch will comply with § 208.21.

(c) *Expedited approval for eligible banks.* An application by an eligible bank to establish a domestic branch is deemed approved on the fifth day after the close of the comment period, required by the Board's Rules of Procedure (12 CFR 262.3), unless the Board or the appropriate Federal Reserve Bank notifies the bank that the application is approved prior to that date or that it is not eligible for expedited review for any reason, including, without limitation, that:

(1) The bank is not an eligible bank as defined by § 208.2(e);

(2) The application contains a material error or is otherwise deficient; or

(3) The application or notice required under the Board's Rules of Procedure (12 CFR 262.3), raises significant supervisory, Community Reinvestment Act, compliance, policy or legal issues that have not been resolved, or a timely substantive adverse comment is submitted.

(d) *Consolidated applications*—(1) *Proposed branches; prior notice of branch opening.* A member bank may seek approval in a single application or notice for any branches that it proposes to establish within one year after the approval date. The bank shall, unless notification is waived, notify the appropriate Reserve Bank one week before opening any branch approved under a consolidated application. A bank is not required to open a branch approved under either a consolidated or single branch application.

(2) *Duration of branch approval.* Branch approvals remain valid for one year unless the Board or the appropriate Reserve Bank notifies the bank that in its judgement, based on reports of condition, examinations, or other information, there has been a change in the bank's condition, financial or otherwise, that warrants reconsideration of the approval.

(e) *Branch closings.* A member bank shall comply with section 42 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831r–1, with regard to branch closings.

(f) *Branch relocations.* A relocation of an existing branch does not require filing a branch application. A relocation of an existing branch, for purposes of determining whether to file a branch application, is a movement that does not substantially affect the nature of the branch's business or customers served.

§ 208.7 Prohibition against use of interstate branches primarily for deposit production. [Reserved]

Subpart B—Investments and Loans

§ 208.20 Authority, purpose, and scope.

(a) *Authority.* Subpart B of Regulation H (12 CFR part 208, subpart B) is issued by the Board of Governors of the Federal Reserve System under 12 U.S.C. 24; sections 9, 11 and 21 of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), and 481–486); sections 1814, 1816, 1818, 1823(j), 1831o, 1831p–1 and 1831r–1 of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1818, 1823(j), 1831o, 1831p–1 and 1831r–1); and the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(b) *Purpose and scope.* This subpart B describes certain investment limitations on member banks, statutory requirements for amortizing losses on agricultural loans and extending credit in areas having special flood hazards, as well as the requirements for issuing letters of credit and acceptances.

§ 208.21 Investments in premises and securities.

(a) *Investment in bank premises.* No state member bank shall invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or make loans to or upon the security of any such corporation unless:

(1) The bank receives the prior approval of the Board;

(2) The aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank (as defined in section 2 of the Banking Act of 1933, as amended, 12 U.S.C. 221a), is less than or equal to the amount of the capital stock and surplus of such bank; or

(3)(i) The aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation that is an affiliate of the bank, is less than or equal to 150 percent of the capital stock and surplus of the bank; and

(ii) The bank:

(A) Has a CAMELS composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of the most recent examination of the bank;

(B) Is well-capitalized and will continue to be well-capitalized, in accordance with subpart D of this part, after the investment or loan; and

(C) Provides notification to the Board not later than 30 days after making the investment or loan.

(b) *Investments in securities.* Member banks are subject to the same limitations and conditions with respect to purchasing, selling, underwriting, and holding investment securities and stocks as are national banks under 12 U.S.C. 24, ¶ 7th.[4]

§ 208.22 Community development and public welfare investments.

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

(1) *Low- or moderate-income area* means:

(i) One or more census tracts in a Metropolitan Statistical Area where the median family income adjusted for family size in each census tract is less than 80 percent of the median family income adjusted for family size of the Metropolitan Statistical Area; or

(ii) If not in a Metropolitan Statistical Area, one or more census tracts or block-numbered areas where the median family income adjusted for family size in each census tract or block-numbered

[4] A member bank, acting as executor or trustee, may hold the stock of any corporation so long as the bank will not vote any of the shares or control in any manner the election of any directors, trustees, or other persons exercising similar functions.

area is less than 80 percent of the median family income adjusted for family size of the State.

(2) *Low- and moderate-income persons* has the same meaning as low- and moderate-income persons as defined in 42 U.S.C. 5302(a)(20)(A).

(3) *Small business* means a business that meets the size-eligibility standards of 13 CFR 121.802(a)(2).

(b) *Investments not requiring prior Board approval.* Notwithstanding the provisions of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) made applicable to member banks by paragraph 20 of section 9 of the Federal Reserve Act (12 U.S.C. 335), a member bank may make an investment, without prior Board approval, if the following conditions are met:

(1) The investment is in a corporation, limited partnership, or other entity, and:

(i) The Board has determined that an investment in that entity or class of entities is a public welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), or a community development investment under Regulation Y (12 CFR 225.25(b)(6)); or

(ii) The Comptroller of the Currency has determined, by order or regulation, that an investment in that entity by a national bank is a public welfare investment under section 5136 of the Revised Statutes (12 U.S.C. 24 (Eleventh)); or

(iii) The entity is a community development financial institution as defined in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)); or

(iv) The entity, directly or indirectly, engages solely in or makes loans solely for the purposes of one or more of the following community development activities:

(A) Investing in, developing, rehabilitating, managing, selling, or renting residential property if a majority of the units will be occupied by low- and moderate-income persons, or if the property is a ''qualified low-income building'' as defined in section 42(c)(2) of the Internal Revenue Code (26 U.S.C. 42(c)(2));

(B) Investing in, developing, rehabilitating, managing, selling, or renting nonresidential real property or other assets located in a low- or moderate-income area and targeted towards low- and moderate-income persons;

(C) Investing in one or more small businesses located in a low- or moderate-income area to stimulate economic development;

(D) Investing in, developing, or otherwise assisting job training or placement facilities or programs that will be targeted towards low- and moderate-income persons;

(E) Investing in an entity located in a low- or moderate-income area if the entity creates long-term employment opportunities, a majority of which (based on full-time equivalent positions) will be held by low- and moderate-income persons; and

(F) Providing technical assistance, credit counseling, research, and program development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development;

(2) The investment is permitted by state law;

(3) The investment will not expose the member bank to liability beyond the amount of the investment;

(4) The aggregate of all such investments of the member bank does not exceed the sum of five percent of its capital stock and surplus;

(5) The member bank is well capitalized or adequately capitalized under §§ 208.43(b) (1) and (2);

(6) The member bank received a composite CAMELS rating of ''1'' or ''2'' under the Uniform Financial Institutions Rating System as of its most recent examination and an overall rating of ''1'' or ''2'' as of its most recent consumer compliance examination; and

(7) The member bank is not subject to any written agreement, cease-and-desist order, capital directive, prompt-corrective-action directive, or memorandum of understanding issued by the Board or a Federal Reserve Bank.

(c) *Notice to Federal Reserve Bank.* Not more than 30 days after making an investment under paragraph (b) of this section, the member bank shall advise its Federal Reserve Bank of the investment, including the amount of the investment and the identity of the entity in which the investment is made.

(d) *Investments requiring Board approval.* (1) With prior Board approval, a member bank may make public welfare investments under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a), other than those specified in paragraph (b) of this section.

(2) Requests for Board approval under this paragraph (d) shall include, at a minimum:

(i) The amount of the proposed investment;

(ii) A description of the entity in which the investment is to be made;

(iii) An explanation of why the investment is a public welfare investment under paragraph 23 of section 9 of the Federal Reserve Act (12 U.S.C. 338a);

(iv) A description of the member bank's potential liability under the proposed investment;

(v) The amount of the member bank's aggregate outstanding public welfare investments under paragraph 23 of section 9 of the Federal Reserve Act;

(vi) The amount of the member bank's capital stock and surplus; and

(vii) If the bank investment is not eligible under paragraph (b) of this section, explain the reason or reasons why it is ineligible.

(3) The Board shall act on a request under this paragraph (d) within 60 calendar days of receipt of a request that meets the requirements of paragraph (d)(2) of this section, unless the Board notifies the requesting member bank that a longer time period will be required.

(e) *Divestiture of investments.* A member bank shall divest itself of an investment made under paragraph (b) or (d) of this section to the extent that the investment exceeds the scope of, or ceases to meet, the requirements of paragraphs (b)(1) through (b)(4) or paragraph (d) of this section. The divestiture shall be made in the manner specified in 12 CFR 225.140, Regulation Y, for interests acquired by a lending subsidiary of a bank holding company or the bank holding company itself in satisfaction of a debt previously contracted.

§ 208.23 Agricultural loan loss amortization.

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

(1) *Accepting official* means:

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

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

(2) *Agriculturally related other property* means any property, real or personal, that the bank owned on January 1, 1983, and any additional property that it acquired prior to January 1, 1992, in connection with a qualified agricultural loan. For the purposes of paragraph (d) of this section, the value of such property shall include the amount previously charged off as a loss.

(3) *Participating bank* means an agricultural bank (as defined in 12 U.S.C. 1823(j)(4)(A)) that, as of January 1, 1992, had a proposal for a capital restoration plan accepted by an accepting official and received permission from the accepting official, subject to paragraphs (d) and (e) of this

section, to amortize losses in accordance with paragraphs (b) and (c) of this section.

(4) *Qualified agricultural loan* means:

(i) Loans that finance agricultural production or are 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 Board; and

(iv) The remaining unpaid balance of any loans described in paragraphs (a)(4)(i), (ii) and (iii) of this section that have been charged off since January 1, 1984, and that qualify for deferral under this section.

(b)(1) Provided there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, the officers, directors, or principal shareholders, a participating bank may amortize in its Reports of Condition and Income:

(i) Any loss on a qualified agricultural loan that the bank would be required to reflect in its financial statements for any period between and including 1984 and 1991; or

(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 that is permitted to amortize losses in accordance with paragraph (b) of this section may restate its capital and other relevant accounts and account for future authorized deferrals and authorizations 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 qualifying capital pursuant to Appendix A of this part.

(d) *Conditions of participation.* In order for a bank to maintain its status as a participating bank, it shall:

(1) Adhere to the approved capital plan and obtain the prior approval of the accepting official before making any modifications to the plan;

(2) Maintain accounting records for each asset subject to loss deferral under the program that document the amount and timing of the deferrals, repayments, and authorizations;

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

(4) 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 less than the percentage of such loans in its loan portfolio on January 1, 1986; and

(5) Provide the accepting official, upon request, with any information the accepting official deems necessary to monitor the bank's amortization, its compliance with the conditions of participation, and its continued eligibility.

(e) *Revocation of eligibility for loss amortization.* The failure to comply with any condition in an acceptance, with the capital restoration plan, or with the conditions stated in paragraph (d) of this section, is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). In addition, acceptance of a bank for loss amortization shall not foreclose any administrative action against the bank that the Board may deem appropriate.

(f) *Expiration date.* The terms of this section will no longer be in effect as of January 1, 1999.

§ 208.24 Letters of credit and acceptances.

(a) *Standby letters of credit.* For the purpose of this section, standby letters of credit include every letter of credit (or similar arrangement however named or designated) that 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 party procuring the issuance of the letter of credit in the performance of an obligation.[5]

(b) *Ineligible acceptance.* An ineligible acceptance is a time draft accepted by a bank, which does not meet the requirements for discount with a Federal Reserve Bank.

(c) *Bank's lending limits.* Standby letters of credit and ineligible acceptances count toward member banks' lending limits imposed by state law.

(d) *Exceptions.* A standby letter of credit or ineligible acceptance is not subject to the restrictions set forth in paragraph (c) of this section if prior to or at the time of issuance of the credit:

(1) The issuing bank is paid an amount equal to the bank's maximum liability under the standby letter of credit; or

(2) The party procuring the issuance of a letter of credit or ineligible acceptance 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 or ineligible acceptance.

§ 208.25 Loans in areas having special flood hazards.

(a) *Purpose and scope*—(1) *Purpose.* The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope.* This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions.* For purposes of this section:

(1) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(2) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(3) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(4) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(5) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(6) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to

[5] A standby letter of credit does 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 12 CFR part 211 (Regulation K).

the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this section, the term *mobile home* means a mobile home on a permanent foundation. The term mobile home includes a manufactured home as that term is used in the National Flood Insurance Program.

(7) *NFIP* means the National Flood Insurance Program authorized under the Act.

(8) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(9) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(10) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(11) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(c) *Requirement to purchase flood insurance where available.*—(1) *In general.* A member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(2) *Table funded loans.* A member bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

(e) *Escrow requirement.* If a member bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed after October 1, 1996, the member bank shall also require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section. The member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(f) *Required use of standard flood hazard determination form.*—(1) *Use of form.* A member bank shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(2) *Retention of form.* A member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

(g) *Forced placement of flood insurance.* If a member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the member bank or its servicer shall purchase insurance on the borrower's behalf. The member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

(h) *Determination fees.*—(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(2) *Borrower fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(iii) Reflects the Director of FEMA's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area;

(iv) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* When a member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a

special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(1) *Contents of notice.* The written notice must include the following information:

(i) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(iii) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(iv) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

(2) *Timing of notice.* The member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(3) *Record of receipt.* The member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(4) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a member bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(5) *Use of prescribed form of notice.* A member bank will be considered to be in compliance with the requirement for notice to the borrower of this paragraph (i) by providing written notice to the borrower containing the language presented in appendix A of this section within a reasonable time before the completion of the transaction. The notice presented in appendix A of this section satisfies the borrower notice requirements of the Act.

(j) *Notice of servicer's identity*—(1) *Notice requirement.* When a member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the member bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(2) *Transfer of servicing rights.* The member bank shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) shall transfer to the transferee servicer.

Appendix A to § 208.25 Sample Form of Notice

Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal balance of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

Subpart C—Bank Securities and Securities-Related Activities

§ 208.30 Authority, purpose, and scope.

(a) *Authority.* Subpart C of Regulation H (12 CFR part 208, subpart C) is issued by the Board of Governors of the Federal Reserve System under 12 U.S.C. 24, 92a, 93a; sections 1818 and 1831p–1(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818, 1831p–1(a)(2)); and sections 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78o–5, 78q, 78q–1, and 78w of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78o–5, 78q, 78q–1, 78w).

(b) *Purpose and scope.* This subpart C describes the requirements imposed upon member banks acting as transfer agents, registered clearing agencies, or sellers of securities under the Securities Exchange Act of 1934. This subpart C also describes the reporting requirements imposed on member banks whose securities are subject to registration under the Securities Exchange Act of 1934.

§ 208.31 State member banks as transfer agents.

(a) The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) prescribing procedures for registration of transfer agents for which the SEC is the appropriate regulatory agency (17 CFR 240.17Ac2–1) apply to member bank transfer agents. References to the ''Commission'' are deemed to refer to the Board.

(b) The rules adopted by the SEC pursuant to section 17A prescribing operational and reporting requirements for transfer agents (17 CFR 240.17Ac2–2 and 240.17Ad–1 through 240.17Ad–16) apply to member bank transfer agents.

§ 208.32 Notice of disciplinary sanctions imposed by registered clearing agency.

(a) *Notice requirement.* Any 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), and that:

(1) Imposes any final disciplinary sanction on any participant therein;

(2) Denies participation to any applicant; or

(3) Prohibits or limits any person in respect to access to services offered by the 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 in this section.

(b) *Notice of final disciplinary actions.* (1) 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 (c) of this section. For the purposes of this paragraph (b), *final disciplinary action* means 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 final disposition of charges of:

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

(ii) Acts or practices constituting a statutory disqualification of a type defined in paragraph (iv) or (v) (except prior convictions) of section 3(a)(39) of the Act.

(2) However, if a registered clearing agency fee schedule specifies certain charges for errors made by its participants in giving instructions to the registered clearing agency which are *de minimis* on a per error basis, and whose purpose is, in part, to provide revenues to the 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 (b).

(c) *Contents of final disciplinary action notice.* Any notice filed pursuant to paragraph (b) of this section shall consist of the following, as appropriate:

(1) The name of the respondent and the respondent's last known address, as reflected on the records of the clearing agency, and the name of the person, committee, or other organizational unit that brought the charges. However, identifying information as to any respondent found not to have violated a provision covered by a charge 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;

(2) A statement describing the investigative or other origin of the action;

(3) As charged in the proceeding, the specific provision or provisions of the rules of the clearing agency violated by the respondent, or the statutory disqualification referred to in paragraph (b)(2) of this section, and a statement describing the answer of the respondent to the charges;

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

(5) A statement describing any sanction imposed, the reasons therefor, and the date upon which the sanction became or will become effective; and

(6) Such other matters as the clearing agency may deem relevant.

(d) *Notice of final denial, prohibition, termination or limitation based on qualification or administrative rules.* (1) Any registered clearing agency, for which the Board is the appropriate regulatory agency, that takes any final action that denies or conditions the participation of any person, or prohibits or limits access, to services offered by the clearing agency, 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 (e) of this section; but such action shall not be considered a final disciplinary action for purposes of paragraph (b) of this section where the action is based on an alleged failure of such person to:

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

(ii) Comply with any administrative requirements of the 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 that may lead to a disciplinary sanction.

(2) However, no such action shall be considered final pursuant to this paragraph (d) that results merely from a notice of such failure to comply to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted the administrative remedies within the registered clearing agency with respect to such a matter.

(e) *Contents of notice required by paragraph (d) of this section.* Any notice filed pursuant to paragraph (d) of this section shall consist of the following, as appropriate:

(1) The name of each person concerned and each person's last known address, as reflected in the records of the clearing agency;

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

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

(4) The date upon which such action became or will become effective; and

(5) Such other matters as the clearing agency deems relevant.

(f) *Notice of final action based on prior adjudicated statutory disqualifications.* Any registered clearing agency for which the Board is the appropriate regulatory agency that takes any final action 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) of this section, where the final action:

(1) Denies or conditions participation to any person, or prohibits or limits access to services offered by the clearing agency; and

(2) Is based upon a statutory disqualification of a type defined in paragraph (A), (B) or (C) of section 3(a)(39) of the Act, consisting of a prior

conviction, as described in subparagraph (E) of section 3(a)(39) of the Act. However, no such action shall be considered final pursuant to this paragraph (f) that results merely from a notice of such disqualification to the person affected, if such person has not sought an adjudication of the matter, including a hearing, or otherwise exhausted the administrative remedies within the clearing agency with respect to such a matter.

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

(1) The name of each person concerned and each person's last known address, as reflected in the records of the clearing agency;

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

(3) 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;

(4) A copy of the order or decision of the court, appropriate regulatory agency, or self-regulatory organization that adjudicated the matter giving rise to the statutory disqualification;

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

(6) Such other matters as the clearing agency deems relevant.

(h) *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 such action becomes effective, 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 (i) of this section.

(i) *Contents of notice of summary suspension.* Any notice pursuant to paragraph (h) of this section shall contain at least the following information, as appropriate:

(1) The name of the participant concerned and the participant's last known address, as reflected in the records of the clearing agency;

(2) The date upon which the summary action became or will become effective;

(3) If the 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 clearing agency;

(4) If the 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 clearing agency;

(5) If the 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 clearing agency determined that the suspension and closing of accounts was necessary for the protection of the clearing agency, its participants, creditors, or investors;

(6) The nature and effective date of the suspension; and

(7) Such other matters as the clearing agency deems relevant.

§ 208.33 Application for stay or review of disciplinary sanctions imposed by registered clearing agency.

(a) *Stays.* The rules adopted by the Securities and Exchange Commission (SEC) pursuant to section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for stays of disciplinary sanctions or summary suspensions imposed by registered clearing agencies (17 CFR 240.19d–2) apply to applications by member banks. References to the ''Commission'' are deemed to refer to the Board.

(b) *Reviews.* The regulations adopted by the Securities and Exchange Commission pursuant to section 19 of the Securities and Exchange Act of 1934 (15 U.S.C. 78s) regarding applications by persons for whom the SEC is the appropriate regulatory agency for reviews of final disciplinary sanctions, denials of participation, or prohibitions or limitations of access to services imposed by registered clearing agencies (17 CFR 240.19d–3 (a)–(f)) apply to applications by member banks. References to the ''Commission'' are deemed to refer to the Board. The Board's Uniform Rules of Practice and Procedure (12 CFR part 263) apply to review proceedings under this § 208.33 to the extent not inconsistent with this § 208.33.

§ 208.34 Recordkeeping and confirmation of certain securities transactions effected by State member banks. [Reserved]

§ 208.35 Qualification requirements for transactions in certain securities. [Reserved]

§ 208.36 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 member bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 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 U.S.C. 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 member banks be deemed to refer to the Board unless the context otherwise requires.

(b) *Elections permitted for member banks with total assets of $150 million or less.* (1) Notwithstanding paragraph (a) of this section or the rules and regulations promulgated by the Commission pursuant to the 1934 Act a 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 the bank with the Board under section 9 of the Federal Reserve Act (12 U.S.C. 324) (Federal Financial Institutions Examination Council Form 033 or 034).

(2) A member bank qualifying for and electing to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section 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 (17 CFR 210.10–01), in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of Form 10–Q.

(c) *Required filings*—(1) *Place and timing of filing.* 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, NW., Washington, DC 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) *Filing fees.* No filing fees specified by the Commission's rules shall be paid to the Board.

(3) *Public inspection.* Copies of the registration statement, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this section (exclusive of exhibits) shall be available for public inspection at the Board's offices in Washington, DC, 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.

(d) *Confidentiality of filing.* 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 following procedure:

(1) 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 omitted and filed separately with the Board.

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

(i) As many copies of the confidential portion, each clearly marked ''CONFIDENTIAL TREATMENT,'' as there are copies of the statement, report, or document filed with the Board. 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

(ii) An application making objection to the disclosure of the confidential portion. The application shall be on a sheet or sheets separate from the confidential portion, and shall:

(A) Identify the portion of the statement, report, or document that has been omitted;

(B) Include a statement of the grounds of objection; and

(C) Include the name of each exchange, if any, with which the statement, report, or document is filed.

(3) The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked ''CONFIDENTIAL TREATMENT,'' and addressed to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551.

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

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

(6) If the Board determines not to sustain the objection because disclosure of the confidential portion is in the public interest, a finding and determination to that effect shall be entered and notice of the finding and determination sent by registered or certified mail to the person.

(7) If the Board determines not to sustain the objection, pursuant to paragraph (d)(6) of this section, the confidential portion shall be made available to the public:

(i) 15 days after notice of the Board's determination not to sustain the objection has been given, as required by paragraph (d)(6) 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; or

(ii) 60 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (d)(6) of this section and the person filing the objection has filed with the Board a written statement of intent 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

(iii) Upon final judicial determination, if adverse to the party filing the objection.

(8) 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.

§ 208.37 Government securities sales practices. [Reserved]

Subpart D—Prompt Corrective Action

§ 208.40 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* Subpart D of Regulation H (12 CFR part 208, subpart D) is issued by the Board of Governors of the Federal Reserve System (Board) under section 38 (section 38) of the Federal Deposit Insurance Act (FDI Act) as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose and scope.* This subpart D defines the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. (Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized.) This subpart also establishes procedures for submission and review of capital restoration plans and for issuance and review of directives and orders pursuant to section 38. Certain of the provisions of this subpart apply to officers, directors, and employees of state member banks. Other provisions apply to any company that controls a member bank and to the affiliates of the member bank.

(c) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the Board under any other provision of law to take supervisory actions to address unsafe or unsound practices or conditions, deficient capital levels, violations of law, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Board, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(d) *Disclosure of capital categories.* The assignment of a bank under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the Board or otherwise required by law, no bank may state in any advertisement or promotional material its capital category under this subpart or that the Board or any other Federal banking agency has assigned the bank to a particular capital category.

§ 208.41 Definitions for purposes of this subpart.

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in section 38 and section 3 of the FDI Act.

(a) *Control*—(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term *controlled* shall be construed consistently with the term *control*.

(2) *Exclusion for fiduciary ownership.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares in a fiduciary capacity. Shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring insured depository institution or company has sole discretionary authority to exercise voting rights with respect to the shares.

(3) *Exclusion for debts previously contracted.* No insured depository institution or company controls another insured depository institution or company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition. The two-year period may be extended at the discretion of the appropriate Federal banking agency for up to three one-year periods.

(b) *Controlling person* means any person having control of an insured depository institution and any company controlled by that person.

(c) *Leverage ratio* means the ratio of Tier 1 capital to average total consolidated assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure (Appendix B to this part).

(d) *Management fee* means any payment of money or provision of any other thing of value to a company or individual for the provision of management services or advice to the bank, or related overhead expenses, including payments related to supervisory, executive, managerial, or policy making functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank.

(e) *Risk-weighted assets* means total weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

(f) *Tangible equity* means the amount of core capital elements in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except mortgage servicing rights to the extent that the Board determines that mortgage servicing rights may be included in calculating the bank's Tier 1 capital.

(g) *Tier 1 capital* means the amount of Tier 1 capital as defined in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

(h) *Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

(i) *Total assets* means quarterly average total assets as reported in a bank's Report of Condition and Income (Call Report), minus intangible assets as provided in the definition of tangible equity. At its discretion the Federal Reserve may calculate total assets using a bank's period-end assets rather than quarterly average assets.

(j) *Total risk-based capital ratio* means the ratio of qualifying total capital to weighted risk assets, as calculated in accordance with the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part).

§ 208.42 Notice of capital category.

(a) *Effective date of determination of capital category.* A member bank shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart as of the date the bank is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* A member bank shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Report of Condition and Income (Call Report) is required to be filed with the Board;

(2) A final report of examination is delivered to the bank; or

(3) Written notice is provided by the Board to the bank of its capital category for purposes of section 38 of the FDI Act and this subpart or that the bank's capital category has changed as provided in paragraph (c) of this section or § 208.43(c).

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment by bank.* A member bank shall provide the Board with written notice that an adjustment to the bank's capital category may have occurred no later than 15 calendar days following the date that any material event occurred that would cause the bank to be placed in a lower capital category from the category assigned to the bank for purposes of section 38 and this subpart on the basis of the bank's most recent Call Report or report of examination.

(2) *Determination by Board to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the Board shall determine whether to change the capital category of the bank and shall notify the bank of the Board's determination.

§ 208.43 Capital measures and capital category definitions.

(a) *Capital measures.* For purposes of section 38 and this subpart, the relevant capital measures are:

(1) The total risk-based capital ratio;

(2) The Tier 1 risk-based capital ratio; and

(3) The leverage ratio.

(b) *Capital categories.* For purposes of section 38 and this subpart, a member bank is deemed to be:

(1) ''Well capitalized'' if the bank:

(i) Has a total risk-based capital ratio of 10.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a leverage ratio of 5.0 percent or greater; and

(iv) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) ''Adequately capitalized'' if the bank:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and

(iii) Has:

(A) A leverage ratio of 4.0 percent or greater; or

(B) A leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth; and

(iv) Does not meet the definition of a ''well capitalized'' bank.

(3) ''Undercapitalized'' if the bank has:

(i) A total risk-based capital ratio that is less than 8.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) Except as provided in paragraph (b)(iii)(B) of this section, has a leverage ratio that is less than 4.0 percent; or

(iv) A leverage ratio that is less than 3.0 percent, if the bank is rated composite 1 under the CAMELS rating system in the most recent examination of the bank and is not experiencing or anticipating significant growth.

(4) ''Significantly undercapitalized'' if the bank has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or

(iii) A leverage ratio that is less than 3.0 percent.

(5) ''Critically undercapitalized'' if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Reclassification based on supervisory criteria other than capital.* The Board may reclassify a well-capitalized member bank as adequately capitalized and may require an adequately-capitalized or an undercapitalized member bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the Board may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are hereinafter referred to generally as ''reclassifications'') in the following circumstances:

(1) *Unsafe or unsound condition.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that the bank is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The Board has determined, after notice and opportunity for hearing pursuant to 12 CFR 263.203, that, in the most recent examination of the bank, the bank received and has not corrected, a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

§ 208.44 Capital restoration plans.

(a) *Schedule for filing plan*—(1) *In general.* A member bank shall file a written capital restoration plan with the appropriate Reserve Bank within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the Board notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required, pursuant to § 208.43(c), to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans.* Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 208.43(c), unless the Board notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the appropriate Reserve Bank within 45 days of receiving such notice, unless the Board notifies the bank in writing that the plan is to be filed within a different period.

(b) *Contents of plan.* All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the Board instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A bank that is required to submit a capital restoration plan as the result of a reclassification of the bank pursuant to § 208.43(c) shall include a description of the steps the bank will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that Act by each company that controls the bank.

(c) *Review of capital restoration plans.* Within 60 days after receiving a capital restoration plan under this subpart, the Board shall provide written notice to the bank of whether the plan has been approved. The Board may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital plan.* If the Board does not approve a capital restoration plan, the bank shall submit a revised capital restoration plan within the time specified by the Board. Upon receiving notice that its capital restoration plan has not been approved, any undercapitalized member bank (as defined in § 208.43(b)(3)) shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions. These provisions shall be applicable until such time as the Board approves a new or revised capital restoration plan submitted by the bank.

(e) *Failure to submit capital restoration plan.* A member bank that is undercapitalized (as defined in § 208.43(b)(3)) and that fails to submit a written capital restoration plan within the period provided in this section shall, upon the expiration of that period, be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(f) *Failure to implement capital restoration plan.* Any undercapitalized member bank that fails in any material respect to implement a capital restoration plan shall be subject to all of the provisions of section 38 and this subpart applicable to significantly undercapitalized institutions.

(g) *Amendment of capital plan.* A bank that has filed an approved capital restoration plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the capital restoration plan as approved prior to the proposed amendment.

(h) *Notice to FDIC.* Within 45 days of the effective date of Board approval of a capital restoration plan, or any amendment to a capital restoration plan, the Board shall provide a copy of the plan or amendment to the Federal Deposit Insurance Corporation.

(i) *Performance guarantee by companies that control a bank*—(1) *Limitation on Liability*—(i) *Amount limitation.* The aggregate liability under the guarantee provided under section 38 and this subpart for all companies that control a specific member bank that is required to submit a capital restoration plan under this subpart shall be limited to the lesser of:

(A) An amount equal to 5.0 percent of the bank's total assets at the time the bank was notified or deemed to have notice that the bank was undercapitalized; or

(B) The amount necessary to restore the relevant capital measures of the bank to the levels required for the bank to be classified as adequately capitalized, as those capital measures and levels are defined at the time that the bank initially fails to comply with a capital restoration plan under this subpart.

(ii) *Limit on duration.* The guarantee and limit of liability under section 38 and this subpart shall expire after the Board notifies the bank that it has remained adequately capitalized for each of four consecutive calendar quarters. The expiration or fulfillment

by a company of a guarantee of a capital restoration plan shall not limit the liability of the company under any guarantee required or provided in connection with any capital restoration plan filed by the same bank after expiration of the first guarantee.

(iii) *Collection on guarantee.* Each company that controls a bank shall be jointly and severally liable for the guarantee for such bank as required under section 38 and this subpart, and the Board may require and collect payment of the full amount of that guarantee from any or all of the companies issuing the guarantee.

(2) *Failure to provide guarantee.* In the event that a bank that is controlled by a company submits a capital restoration plan that does not contain the guarantee required under section 38(e)(2) of the FDI Act, the bank shall, upon submission of the plan, be subject to the provisions of section 38 and this subpart that are applicable to banks that have not submitted an acceptable capital restoration plan.

(3) *Failure to perform guarantee.* Failure by any company that controls a bank to perform fully its guarantee of any capital plan shall constitute a material failure to implement the plan for purposes of section 38(f) of the FDI Act. Upon such failure, the bank shall be subject to the provisions of section 38 and this subpart that are applicable to banks that have failed in a material respect to implement a capital restoration plan.

§ 208.45 Mandatory and discretionary supervisory actions under section 38.

(a) *Mandatory supervisory actions*—(1) *Provisions applicable to all banks.* All member banks are subject to the restrictions contained in section 38(d) of the FDI Act on payment of capital distributions and management fees.

(2) *Provisions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks.* Immediately upon receiving notice or being deemed to have notice, as provided in § 208.42 or § 208.44, that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting payment of capital distributions and management fees (section 38(d));

(ii) Requiring that the Board monitor the condition of the bank (section 38(e)(1));

(iii) Requiring submission of a capital restoration plan within the schedule established in this subpart (section 38(e)(2));

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 3(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 208.42 or § 208.44, that the bank is significantly undercapitalized, or critically undercapitalized, or that the bank is subject to the provisions applicable to institutions that are significantly undercapitalized because the bank failed to submit or implement in any material respect an acceptable capital restoration plan, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 208.32, that the bank is critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act:

(i) Restricting the activities of the bank (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the bank (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the Board's discretion to take in connection with: A member bank that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; an officer or director of such bank; or a company that controls such bank, the Board shall follow the procedures for issuing directives under 12 CFR 263.202 and 263.204, unless otherwise provided in section 38 or this subpart.

Subpart E—Real Estate Lending and Appraisal Standards

§ 208.50 Authority, purpose, and scope.

(a) *Authority.* Subpart E of Regulation H (12 CFR part 208, subpart E) is issued by the Board of Governors of the Federal Reserve System under section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o) and Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 3331–3351).

(b) *Purpose and scope.* This subpart E prescribes standards for real estate lending to be used by member banks in adopting internal real estate lending policies. The standards applicable to appraisals rendered in connection with federally related transactions entered into by member banks are set forth in 12 CFR part 225, subpart G (Regulation Y).

§ 208.51 Real estate lending standards.

(a) *Adoption of written policies.* Each state bank that is a member of the Federal Reserve System shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b) *Requirements of lending policies.* (1) Real estate lending policies adopted pursuant to this section shall be:

(i) Consistent with safe and sound banking practices;

(ii) Appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Reviewed and approved by the bank's board of directors at least annually.

(2) The lending policies shall establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the bank's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the bank's real estate lending policies.

(c) *Monitoring conditions.* Each member bank shall monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) *Interagency guidelines.* The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies (contained in Appendix C of this part) established by the Federal bank and thrift supervisory agencies.

Subpart F—Miscellaneous Requirements

§ 208.60 Authority, purpose, and scope.

(a) *Authority.* Subpart F of Regulation H (12 CFR part 208, subpart F) is issued

by the Board of Governors of the Federal Reserve System under sections 9, 11, 21, 25 and 25A of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), 481–486, 601 and 611), section 7 of the International Banking Act (12 U.S.C. 3105), section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), sections 1814, 1816, 1818, 1820(d)(9), 1831o, 1831p–1 and 1831r–1 of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p–1 and 1831r–1), and the Bank Secrecy Act (31 U.S.C. 5318).

(b) *Purpose and scope.* This subpart F describes a member bank's obligation to disclose its financial condition to the public, to implement security procedures to discourage certain crimes, to file suspicious activity reports, and to comply with the Bank Secrecy Act's requirements for reporting and recordkeeping of currency and foreign transactions. It also describes the examination schedule for certain small insured member banks.

§ 208.61 Bank security procedures.

(a) *Authority, purpose, and scope.* Pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), member banks are required to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies, and to assist in the identification and prosecution of persons who commit such acts. It is the responsibility of the member bank's board of directors to comply with the provisions of this section and ensure that a written security program for the bank's main office and branches is developed and implemented.

(b) *Designation of security officer.* Upon becoming a member of the Federal Reserve System, a member bank's board of directors shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time, but no later than 180 days, and to administer a written security program for each banking office.

(c) *Security program.* (1) The security program shall:

(i) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(ii) Establish procedures that will assist in identifying persons committing crimes against the institution and that will preserve evidence that may aid in their identification and prosecution. Such procedures may include, but are not limited to: maintaining a camera that records activity in the banking office; using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices; and retaining a record of any robbery, burglary, or larceny committed against the bank;

(iii) Provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a burglary, robbery, or larceny; and

(iv) Provide for selecting, testing, operating, and maintaining appropriate security devices, as specified in paragraph (c)(2) of this section.

(2) *Security devices.* Each member bank shall have, at a minimum, the following security devices:

(i) A means of protecting cash and other liquid assets, such as a vault, safe, or other secure space;

(ii) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(iii) Tamper-resistant locks on exterior doors and exterior windows that may be opened;

(iv) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(v) Such other devices as the security officer determines to be appropriate, taking into consideration: the incidence of crimes against financial institutions in the area; the amount of currency and other valuables exposed to robbery, burglary, or larceny; the distance of the banking office from the nearest responsible law enforcement officers; the cost of the security devices; other security measures in effect at the banking office; and the physical characteristics of the structure of the banking office and its surroundings.

(d) *Annual reports.* The security officer for each member bank shall report at least annually to the bank's board of directors on the implementation, administration, and effectiveness of the security program.

(e) *Reserve Banks.* Each Reserve Bank shall develop and maintain a written security program for its main office and branches subject to review and approval of the Board.

§ 208.62 Suspicious Activity Reports.

(a) *Purpose.* This section ensures that a member bank files a Suspicious Activity Report when it detects a known or suspected violation of Federal law, or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. This section applies to all member banks.

(b) *Definitions.* For the purposes of this section:

(1) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(2) *Institution-affiliated party* means any institution-affiliated party as that term is defined in 12 U.S.C. 1786(r), or 1813(u) and 1818(b) (3), (4) or (5).

(3) *SAR* means a Suspicious Activity Report on the form prescribed by the Board.

(c) *SARs required.* A member bank shall file a SAR with the appropriate Federal law enforcement agencies and the Department of the Treasury in accordance with the form's instructions by sending a completed SAR to FinCEN in the following circumstances:

(1) *Insider abuse involving any amount.* Whenever the member bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.

(2) *Violations aggregating $5,000 or more where a suspect can be identified.* Whenever the member bank detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $5,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an ''alias,'' then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.

(3) *Violations aggregating $25,000 or more regardless of a potential suspect.* Whenever the member bank detects any known or suspected Federal criminal

violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank and involving or aggregating $25,000 or more in funds or other assets, where the bank believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(4) *Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* Any transaction (which for purposes of this paragraph (c)(4) means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at or through the member bank and involving or aggregating $5,000 or more in funds or other assets, if the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under federal law;

(ii) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(d) *Time for reporting.* A member bank is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a member bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations requiring immediate attention, such as when a reportable violation is on-going, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and the Board in addition to filing a timely SAR.

(e) *Reports to state and local authorities.* Member banks are encouraged to file a copy of the SAR with state and local law enforcement agencies where appropriate.

(f) *Exceptions.* (1) A member bank need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(2) A member bank need not file a SAR for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(g) *Retention of records.* A member bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of the filing of the SAR. Supporting documentation shall be identified and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A member bank must make all supporting documentation available to appropriate law enforcement agencies upon request.

(h) *Notification to board of directors.* The management of a member bank shall promptly notify its board of directors, or a committee thereof, of any report filed pursuant to this section.

(i) *Compliance.* Failure to file a SAR in accordance with this section and the instructions may subject the member bank, its directors, officers, employees, agents, or other institution affiliated parties to supervisory action.

(j) *Confidentiality of SARs.* SARs are confidential. Any member bank subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed citing this section, applicable law (e.g., 31 U.S.C. 5318(g)), or both, and notify the Board.

(k) *Safe harbor.* The safe harbor provisions of 31 U.S.C. 5318(g), which exempts any member bank that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, covers all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this section or are filed on a voluntary basis.

§ 208.63 Procedures for monitoring Bank Secrecy Act compliance.

(a) *Purpose.* This section is issued to assure that all state member banks establish and maintain procedures reasonably designed to assure and monitor their compliance with the provisions of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103, requiring recordkeeping and reporting of currency transactions.

(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 assure and monitor compliance with the recordkeeping and reporting requirements set forth in the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) 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 assure 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.

§ 208.64 Frequency of examination. [Reserved]

Subpart G—Interpretations

§ 208.100 Sale of bank's money orders off premises as establishment of branch office.

(a) The Board of Governors has been asked to consider whether the appointment by a member bank of an agent to sell the bank's money orders, at a location other than the premises of the bank, constitutes the establishment of a branch office.

(b) Section 5155 of the Revised Statutes (12 U.S.C. 36), which is also applicable to member banks, defines the term branch as including ''any branch bank, branch office, branch agency,

additional office, or any branch place of business * * * at which deposits are received, or checks paid, or money lent.'' The basic question is whether the sale of a bank's money orders by an agent amounts to the receipt of deposits at a branch place of business within the meaning of this statute.

(c) Money orders are classified as deposits for certain purposes. However, they bear a strong resemblance to traveler's checks that are issued by banks and sold off premises. In both cases, the purchaser does not intend to establish a deposit account in the bank, although a liability on the bank's part is created. Even though they result in a deposit liability, the Board is of the opinion that the issuance of a bank's money orders by an authorized agent does not involve the receipt of deposits at a ''branch place of business'' and accordingly does not require the Board's permission to establish a branch.

§ 208.101 Investments in Federal Agricultural Mortgage Corporation (Farmer Mac) stock.

(a) Member banks may purchase and hold for their own account common stock in the Federal Agricultural Mortgage Corporation (Farmer Mac) incidental to their participation in the secondary market for agricultural real estate. Although banks are generally prohibited from owning stock (*See* section 5136 of the Revised Statutes (12 U.S.C. 24)), they are not prohibited from holding stock where Congress has evidenced a clear intention that they be allowed to hold such stock in order to achieve a legislative purpose.

(b) The legislative history and provisions of the statute creating Farmer Mac indicate that Congress envisioned the development of secondary markets through the creation of private entities owned entirely by institutions involved in lending in the particular market under consideration. It is clear from the explicit provisions of the enabling statute as well as from the legislative history that Congress contemplated that banks, including member banks, would purchase and hold stock in Farmer Mac. Member banks are therefore not prohibited from purchasing such shares in nominal amounts consistent with safe and sound banking practices and state law.

§ 208.102 Investments in shares of an investment company.

(a) A member bank may purchase and hold for its own account stock of any investment company (including a money market mutual fund) provided that:

(1) The investment company only has the authority, as stated in the investment objectives of its current prospectus, to invest in the following securities and no others: United States Treasury and agency obligations, general obligations of states and municipalities, corporate debt securities, and any other securities designated in 12 U.S.C. 24(7) as eligible for purchase by national banks that member banks are authorized to purchase directly. The investment company may have authority, as stated in the investment objectives of its current prospectus, to enter into futures, forwards and option contracts relating to the above securities when those futures, forwards and option contracts are to be used solely to reduce interest rate risk and not for speculation. The investment company may also have authority, as stated in the investment objectives of its current prospectus, to enter into repurchase agreements and securities lending contracts relating to the securities designated above if those contracts comply with policy statements adopted by the Federal Financial Institutions Examination Council (FFIEC). *See* Federal Reserve Regulatory Service 3–1579.1 (Nov. 12, 1985).

(i) If the portfolio of the investment company in which a member bank may invest consists solely of obligations that the bank could purchase without restriction as to amount, or solely of those obligations and futures, forwards, options, repurchase agreements and securities lending contracts relating solely to those obligations, no express limit is placed on investment.

(ii) If the portfolio of the investment company in which a member bank may invest includes any securities that the bank could purchase subject to a restriction as to amount, the pro-rata share of holdings of such securities of an issuer indirectly held by a member bank through its holdings of investment company stock (including money market mutual funds), when aggregated with the direct investment in securities of that issuer by the bank, must not exceed the investment limit.

(2) The investment company whose stock is purchased by a member bank must register with the Securities and Exchange Commission under the Investment Company Act of 1940 and the Securities Act of 1933, unless the conditions of paragraph (a)(3) of this section are met.

(3) The stock purchased may be of a privately offered fund if the sponsor of the fund is a subsidiary of a bank holding company, and if the stock of the fund is held solely by subsidiaries of the bank holding company.

(4) The stock purchased must represent an equitable, equal, and proportionate undivided interest in the underlying assets of the investment company.

(5) The stockholders must be shielded from personal liability for acts and obligations of the investment company.

(6) The member bank's investment policy and procedures, as formally approved by its board of directors, must specifically provide for investment in investment company stock. The investment policy must establish procedures, standards, and controls that relate specifically to investments in investment company stock and must provide that prior approval of the board of directors of the bank is necessary for investment in a specific investment company and that this approval be recorded in the official board minutes. Furthermore, the bank must review its holdings of investment company stock at least quarterly to ensure that investments have been made in accordance with the policy and legal requirements, unless the investment objectives of the investment companies, as stated in their current prospectuses, restrict investments to those obligations that the member bank could purchase without restriction as to amount.

(b) The interpretation in this section does not exempt member banks from any provision of state law.

§ 208.103 Obligations concerning institutional customers. [Reserved]

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(e).

§§ 250.120 through 250.123, 250.140, 250.161, 250.162, 250.220. [Removed]

2. Sections 250.120, 250.121, 250.122, 250.123, 250.140, 250.161, 250.162, 250.220 are removed.

§§ 250.300 through 250.302. [Removed]

3. The undesignated centerheading preceding § 250.300 and §§ 250.300 through 250.302 are removed.

By order of the Board of Governors of the Federal Reserve System, March 20, 1997.

William W. Wiles,

Secretary of the Board.

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