

(3) The customer's ability to understand the economic features of the security involved;

(4) The customer's ability to independently evaluate how market developments would affect the security; and

(5) The complexity of the security or securities involved.

(i) A determination that a customer is making independent investment decisions will depend on the nature of the relationship that exists between the bank and the customer. Relevant considerations could include:

(1) Any written or oral understanding that exists between the bank and the customer regarding the nature of the relationship between the bank and the customer and the services to be rendered by the bank;

(2) The presence or absence of a pattern of acceptance of the bank's recommendations;

(3) The use by the customer of ideas, suggestions, market views and information obtained from other government securities brokers or dealers or market professionals, particularly those relating to the same type of securities; and

(4) The extent to which the bank has received from the customer current comprehensive portfolio information in connection with discussing recommended transactions or has not been provided important information regarding its portfolio or investment objectives.

(j) Banks are reminded that these factors are merely guidelines that will be utilized to determine whether a bank has fulfilled its suitability obligation with respect to a specific institutional customer transaction and that the inclusion or absence of any of these factors is not dispositive of the determination of suitability. Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular bank/customer relationship, assessed in the context of a particular transaction.

(k) For purposes of the interpretation in this section, an institutional customer shall be any entity other than a natural person. In determining the applicability of the interpretation in this section to an institutional customer, the Board will consider the dollar value of the securities that the institutional customer has in its portfolio and/or under management. While the interpretation in this section is potentially applicable to any institutional customer, the guidance contained in this section is more appropriately applied to an institutional customer with at least \$10

million invested in securities in the aggregate in its portfolio and/or under management.

## **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 [Removed]**

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

**§§ 250.300 through 250.302 [Removed]**

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

By order of the Board of Governors of the Federal Reserve System, July 6, 1998

**Jennifer J. Johnson,**  
*Secretary of the Board.*

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**BILLING CODE 6210-01-P**

## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 209**

**[Regulation I; Docket No. R-0966]**

### **Issue and Cancellation of Federal Reserve Bank Capital Stock**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System is amending its Regulation I regarding the issue and cancellation of Federal Reserve Bank Capital Stock in order to reduce regulatory burden and simplify and update requirements. The amendments modernize Regulation I in accordance with the Board's policy of regular review of its regulations and the Board's review of its regulations pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

**EFFECTIVE DATE:** October 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Rick Heyke, Staff Attorney (202/452-3688), Legal Division, Board of Governors; Bill Pullen, Accountant (202/736-1947, Division of Reserve Bank Operations and Payment Systems, Board of Governors; or Anthony Scafide, Manager (215/574-6546), Wholesale Payments Division, Federal Reserve Bank of Philadelphia. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins Thompson (202/452-3544).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

As part of its policy of regular review of its regulations, and consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), the Board of Governors of the Federal Reserve System (Board) is amending its Regulation I regarding issue and cancellation of Federal Reserve Bank capital stock (12 CFR part 209). 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 amendments are designed to reduce regulatory burden and simplify and update the Regulation.

The Board published a notice of proposed rulemaking in the **Federal Register** on March 31, 1997 (62 FR 15297) that solicited comments on the proposed amendments described below. In general, the amendments simplified, modernized, and condensed the Regulation, and reflected the replacement of share certificates by a book-entry system. The amendments also codified Board and staff interpretations. In addition, the amendments deleted the many references to specific forms. Many of these references are incorrect because the forms no longer exist or no longer have the same identification numbers. Finally, the proposal sought comment on the method of computing accrued dividends on Reserve Bank capital stock and on deferring changes in Reserve Bank capital stock positions to reflect small changes in member bank capital stock and surplus.

The Board received nine comments on its proposal, five from Federal Reserve Banks, three from banking organizations, and one from a trade association. The comments were generally supportive of the proposal overall, and especially of the shift to book entry electronic recordkeeping.

### **Final Rule**

The Board is adopting the revised Regulation I substantially as proposed. In addition, in response to comments, the final Regulation makes clear that Reserve Bank stock is issued to member banks in organization as of their opening for business and not before, incorporates the Board's final rule on relocation of member banks and makes appropriate adjustments to the section on Cancellation of Reserve Bank Stock, carries over adjustments in Reserve

Bank stock positions that do not exceed the lesser of 15 percent or 100 shares until the year-end report of condition, clarifies the treatment of gains or losses on securities available for sale and foreign exchange translation adjustments, and adopts a 360-day year of 30-day months for dividend accruals.

An section-by-section discussion follows.

#### *Banks Desiring to Become Member Banks*

Proposed § 209.2 combined and condensed existing §§ 209.1 and 209.2 regarding national and state bank applications. Existing § 209.1 also specified the amount of Reserve Bank stock for which national banks should apply, but the proposal combined all references to amount in proposed § 209.4 and deleted repetitive explanations. The Board received no specific comments on subsection (a) as proposed and the final rule adopts the subsection as proposed.

Subsection (b) specified procedures for issuance of Reserve Bank stock. The proposal provided for issuance of such stock when all applicable requirements had been complied with in the case of a state bank approved for membership. One commenter suggested that the Regulation clarify that the issuance of the stock to a state member bank may not precede its opening for business. National banks in organization are issued stock in their Reserve Banks as of the date upon which they open for business. The Board is modifying § 209.2(b) in the final rule to require that in the case of a state member bank in organization, assuming all applicable requirements have been complied with, its Reserve Bank shares shall likewise be issued as of the date it opens for business.

Proposed § 209.2 also included a subsection (c) that would specify the Reserve Bank of which a bank may become a member and that was the subject of a separate request for comment. See 62 FR 11117 (March 11, 1997). That rule was separately approved by the Board and is incorporated herein. See 62 FR 34613 (June 27, 1997).

#### *Cessation of Membership*

Proposed § 209.3 combined and simplified existing §§ 209.5(b) (merger of a member bank into a state nonmember bank), 209.6 (conversion of a national bank into a state nonmember bank), 209.7 (insolvency), 209.8 (voluntary liquidation), 209.9(b) (national bank in the hands of a conservator to be liquidated), 209.10 (closed state member banks not in

liquidation), 209.11 (voluntary withdrawal from membership by state bank), and 209.12 (involuntary termination of state bank membership).

The existing Regulation distinguishes between insolvency and voluntary liquidation (where the bank or receiver was required to file for cancellation of Reserve Bank stock within three months), other cessation of business by state member banks (where failure by the bank to file for cancellation within 60 days commenced a process whereby the Board might order termination of membership), and other cases such as voluntary withdrawal, merger into a nonmember bank, or conversion of a national bank into a nonmember state bank (where the regulation imposed no specific timing requirement for filing an application for cancellation of Reserve Bank stock). Proposed 209.3(a) provided instead that all such banks (or receivers) shall file promptly for cancellation of Reserve Bank stock, failing which the Board may order the membership of the bank terminated under 209.3(b).

The Federal Reserve Act (the Act) provides in section 6(2) (12 U.S.C. 288) that the Comptroller of the Currency may appoint a receiver for a national bank that has discontinued banking operations for 60 days but has not gone into liquidation, if the Comptroller deems it advisable. The existing regulation includes in § 209.9(a) a provision for the appropriate Reserve Bank to notify the Office of the Comptroller of the Currency in the event a national bank has ceased business for 60 days but has not gone into liquidation, together with a statement of reasons why a receiver should be appointed. The proposal omitted this provision. The appropriate procedures for communication among the Board, the Reserve Bank, and the Comptroller's office in such a case would depend on the facts and circumstances of the particular case.

Subsection (c) of the proposal sets forth the effective date of cancellation in whole of Reserve Bank stock held by member banks. One commenter inquired about dividend accruals between the effective date of cancellation and the date of actual cancellation. While this question does not arise in the case of a member bank all of whose Reserve Bank shares are maintained in an electronic register at the Reserve Bank, it could arise in the case of a member bank holding certificates. In that case, dividends cease to accrue on the effective date of cancellation.<sup>1</sup>

<sup>1</sup> The Reserve Bank will pay for the stock on the effective date unless the former member bank has

Subsection (d) of the proposal condensed and simplified the existing procedures for dealing with mergers of member banks. In light of the adoption of the change in location provisions discussed above and included in this final rule at § 209.2(c), and because changes in location and mergers of member banks located in different Federal Reserve Districts involve similar procedures, the final rule modifies the proposal to distinguish between mergers of member banks in the same District, discussed in paragraph (d)(1), and changes in location and mergers of member banks located in different districts, discussed in paragraph (d)(2). In the former case, the Reserve Bank cancels the shares of the nonsurviving bank and credits the appropriate number of shares to the surviving bank. In the latter case, the Reserve Bank where the nonsurviving bank is located (or from whose District the member bank's location is being changed) cancels the shares of the nonsurviving (or relocating) bank and transfers the amount paid in for those shares to the Reserve Bank where the surviving bank is located (or to whose District the member bank's location is being changed), which credits the appropriate number of shares to the surviving (or relocated) bank.

Subsection (e) of the proposal required six months notice of voluntary withdrawal unless waived by the Board. A Reserve Bank suggested the period should be shortened to three months. The Act permits withdrawal by state member banks upon six months written notice but authorizes the Board to waive both the notice requirement and a related requirement that no Reserve Bank cancel more than 25 percent of its stock in a calendar year. The Regulation tracks the statutory language and the Board believes that the waiver mechanism should continue to prevent any hardship for withdrawing banks without creating the possibility of instability in Reserve Bank capital stock.

The Board received no other specific comments on § 209.3. Other than the procedural changes to reflect inter-District mergers and relocations and conforming changes for intra-District mergers, the final rule adopts proposed § 209.3 as proposed.

#### *Amounts and Payments; Frequency of Adjustment*

Proposed § 209.4(a) combined in one section the requirement for amount of total subscription for Reserve Bank stock (other than for a mutual savings

not made timely application as required under subsection (a).

bank) on becoming a member or on a change in capital stock and surplus. The Act requires member banks (other than mutual savings banks) to subscribe for Reserve Bank capital stock in an amount equal to 6 percent of their capital stock and surplus. Member banks are required to pay in half this amount and half is subject to call by the Reserve Bank.

Section 5 of the Act provides that Federal Reserve Bank stock shall be adjusted from time to time as member banks increase or decrease capital stock and surplus. The Act does not specify whether this adjustment must be done immediately or can be done periodically after a number of changes in a member bank's capital stock and surplus have occurred or when such changes become in the aggregate significant. There is a burden associated with adjusting banks' Reserve Stock positions to reflect small changes in the banks' capital accounts. The Board sought comment on how frequently, or after how much cumulative dollar or percentage change, member banks should be required to adjust their Reserve Bank capital stock holdings.

The Board received comments on this issue from five Reserve Banks, three banking organizations, and a trade association. All commenters suggested some form of carryover. Recommendations ranged from carrying over changes of less than 100 shares (\$5,000 of investment in Reserve Bank stock or \$166,600 of change in member bank capital stock and surplus) to carrying over changes of less than 25%. One Reserve Bank suggested that the Board carry over changes that do not exceed either a specified dollar amount or a percentage, on the grounds that smaller community banks' ownership of Reserve Bank stock need not be changed unless the change would amount to, say, 15 percent but larger banks would need to change their Reserve Bank stock positions to reflect significant dollar amounts even though these amounts would represent smaller percentage changes. Several commenters suggested a quarterly, semi-annual, or annual adjustment either in lieu of or in addition to adjustments occasioned by changes in excess of the permitted carryover. In addition, a number of commenters suggested that member banks be given from 30 days to six months to make any required adjustments. The comments also made clear a lack of consistency in this matter among Reserve Banks, and one commenter urged adoption of a consistent policy across the System.

In light of the comments and the System's experience, the Board has decided in the final rule to carry over

changes within a calendar year until the cumulative change exceeds the lesser of 15 percent or 100 shares of Reserve Bank capital stock. Required changes must be made promptly after filing the call report which reflects a change in capital stock and paid-in surplus in excess of the amount permitted to be deferred. In addition, every member bank shall file to eliminate any carryover promptly after its report of condition as of December 31 of each year.

The Board received no other comments on § 209.4(a), and the final rule otherwise adopts proposed § 209.4(a) as proposed. One commenter suggested that an item be added to the call report form showing the difference between the amount of Reserve Bank stock a member bank holds and three percent of the member bank's capital and surplus. Since the call report form already requires sufficient information for the calculation, the Board is not adopting this suggestion.

#### *Preferred Stock, Retained Earnings, Securities Available for Sale, and Translation Gains and Losses*

Proposed § 209.4(b) defined member bank capital stock and surplus as capital stock and paid-in surplus. One commenter asked if capital stock includes preferred stock; the Board believes that both common stock and preferred stock are included in the term capital stock. A Reserve Bank suggested utilizing "permanent capital," defined to include minority interests and perpetual preferred stocks, but exclude sinking fund preferred stocks, with a view to making the definition more consistent with definitions used elsewhere in the Board's Regulations. Three commenters strongly supported continuing to omit retained earnings from the capital base for purposes of Reserve Bank stock ownership requirements, and no commenter opposed the proposal in this regard.

The definition of capital stock and surplus in Regulation I has always excluded retained earnings or undivided profits. This exclusion does not conform to definitions used elsewhere in the Board's regulations. The exclusion of retained earnings from the definition of capital stock and surplus minimizes member banks' adjustments in their Reserve Bank stock holdings. The Federal Reserve System experienced approximately 1500 adjustments in Reserve Bank capital stock as a result of changes in member bank capital stock and surplus in 1992. The Board estimates that this number would increase substantially if it were

necessary to adjust for changes in retained earnings of member banks.

Although retained earnings were generally excluded from the definition, the proposal incorporated previous guidance requiring a deficit in retained earnings to be subtracted from capital stock and surplus. The proposal also continued an exception for cases where the deficit was relatively small and the appropriate Reserve Bank was satisfied that the deficit would be extinguished by accumulation of earnings or formal reduction of surplus, in which case the adjustment of Reserve Bank stock might be deferred until the end of the quarter in which the deficit arose.

Because the final rule only requires adjustment of member bank Reserve Bank stock positions to reflect changes in member bank capital as shown on the bank's call report as of the end of the quarter, the provision in the proposal to defer a deficit until the end of the quarter in which it arose is no longer necessary and has been deleted from the final rule.

Two commenters raised the issue of gains and losses on securities available for sale, and one of them also raised the issue of unrealized foreign exchange losses. The Board believes that these should be treated in the same manner as retained earnings. Thus, in the event that the aggregate, as shown on a member bank's call report as of the end of the quarter, of its retained earnings, gains (losses) on securities available for sale, and foreign currency translation gains or losses is a deficit, the deficit should be subtracted from capital and surplus. The amendments therefore modify the proposal to treat this aggregate in the same manner as the proposal treated retained earnings.

The Board received no other specific comments on § 209.4(b). Other than deleting the deferral of deficits to the end of the quarter and clarifying the status of gains (losses) on securities available for sale and translation adjustments, the final rule adopts proposed § 209.4(b) as proposed.

#### *Savings Banks*

Proposed § 209.4(c) was a condensed version of existing § 209.4 specifying that mutual savings banks are required to subscribe for Reserve Bank stock in an amount equal to 0.6 percent of total deposits rather than 6 percent of capital and surplus. Mutual savings banks not permitted to hold Reserve Bank stock are required to maintain a deposit at the Reserve Bank in the same amount pending a change in state law to permit purchase of the stock. The Board received no specific comments on this section and, other than the carryover of

adjustments not exceeding 15 percent or 100 shares discussed above, the final rule adopts proposed § 209.4(c) as proposed.

#### *Accrued Dividends*

Proposed §§ 209.4(d) and (e)(1) specified that transactions in Reserve Bank capital stock between member banks and the Reserve Bank take place at the subscription price plus accrued dividends at the rate of one-half of one percent per month (provided that the total price paid on redemption of Reserve Bank stock does not exceed the book value of such stock). Under section 5 of the Act (12 U.S.C. 287), banks applying for Reserve Bank capital stock are required to pay the subscription price plus accrued dividends for such stock. Under sections 5, 6, and 9(10) of the Act (12 U.S.C. 287, 288 and 328), Reserve Banks redeeming their capital stock from member banks that are in voluntary liquidation, or which have been declared insolvent and for which a receiver has been appointed, or from state member banks on voluntary withdrawal from or involuntary termination of membership, are required to pay a price equal to the cash subscription price originally paid plus accrued dividends, but may not pay a price exceeding the book value of the Reserve Bank stock. The Act is silent on whether accrued dividends are payable by Reserve Banks in other cases such as merger into nonmember banks. In practice, Reserve Banks have included accrued dividends in both purchases and redemptions, including intra-month accrued dividends, and the amendments applied the concept of accrued dividends to all transactions in Reserve Bank capital stock.<sup>2</sup> In cases where the Act requires accrued dividends, it specifies that they shall accrue at the rate of one-half percent per month.

The Board sought comment on the appropriate method of computing accrued dividends. Generally the Reserve Banks have accrued intra-month dividends on the basis of the actual number of days elapsed within a month divided by the number of actual days in the month. This method results in different daily accruals depending on the number of days in the month for which intra-month accrued dividends

are calculated. The Board requested comment on whether adopting another method, such as use of a standard 30-day month, would simplify the computation.

The Board received nine comments on this issue. Three of the Reserve Banks and all three banking organizations that commented favored adopting a 360 day year of twelve 30-day months, generally citing simplicity, general industry practice, and consequent lack of confusion. One Reserve Bank reported that member banks are frequently calling for an explanation of the method currently used, and another pointed out that the use of a standard 30-day month would avoid the need to override automated systems. Two Reserve Banks and one trade association supported the existing practice. The Board has adopted a 360-day year of twelve 30-day months for purposes of calculating accruals on Reserve Bank stock in the final rule and has otherwise adopted proposed §§ 209.4(d) and (e)(1) as proposed.

#### *Cancellation Payments*

Proposed § 209.4(e)(2) specified that in the case of any cancellation of Reserve Bank stock under Regulation I, the Reserve Bank may first apply the proceeds to any liability of the member bank to the Reserve Bank, and pay over the remainder to the bank or receiver as appropriate. This replaced a similar requirement in existing § 209.5(b), and clarified that the principle may apply to partial as well as total cancellations. The Board received no specific comments on this issue and the final rule adopts proposed § 209.4 (e)(2) as proposed.

#### *The Share Register*

Proposed § 209.5 revised the share register provision of the Regulation to reflect the modern book-entry and electronic records systems the Reserve Banks have implemented. This change permits eliminating the numerous provisions of the existing Regulation that deal with the circumstances under which share certificates may be retained or must be submitted for reissue. For example, existing § 209.13(a) requires a member bank to surrender its certificate in the event of a change in name and for the Reserve Bank to issue a new certificate in the new name. Existing § 209.5(a) includes a lengthy footnote explaining the difference between transfer of Reserve Bank stock certificates by purchase and by operation of law, because a new certificate is not required in the case of transfer by operation of law. Under the

proposal, the Reserve Bank in each case need merely change the name of the stockholder in its records.

Several of the comments that generally supported the proposed changes made specific favorable reference to the change to an electronic book-entry recordkeeping system, and the Board received no adverse comments on this section. The final rule adopts proposed § 209.5 as proposed.

#### **Final Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish a final regulatory flexibility analysis with any notice of a final rule. One of the requirements of a final regulatory flexibility analysis (5 U.S.C. 604(a))—a statement of the need for, and the objectives of, the rule—is set forth above. The amendments require no additional reporting or recordkeeping requirements and do not overlap with other federal rules.

A second requirement for the final regulatory flexibility analysis is a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis included in the notice of proposed rulemaking. The Board received no comments specifically related to the initial regulatory flexibility analysis.

The third requirement for the final regulatory flexibility analysis is a description of any significant alternatives to the rule consistent with the stated objectives of the applicable statutes and designed to minimize any significant impact of the rule on small entities. The rule will apply to all member banks regardless of size.

The amendments are burden-reducing. Therefore, the Board believes that the amendments will not have a significant adverse economic impact on a substantial number of small entities.

#### **Paperwork Reduction Act**

The rule contains no collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR Part 1320, Appendix A.1).

#### **List of Subjects in 12 CFR Part 209**

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

#### **Authority and Issuance**

For the reasons set forth in the preamble, the Board revises part 209 of chapter II of title 12 to read as follows:

<sup>2</sup> Under sections 6 and 9(10) of the Act, a Reserve Bank is under no obligation to pay unearned accrued dividends on redemption of its capital stock from an insolvent member bank for which a receiver has been appointed or from state member banks on voluntary withdrawal from or involuntary termination of membership. See, e.g., former Board Interpretation of April 17, 1925, X-4322, and related note, formerly published in the Federal Reserve Regulatory Service at 3–500.

**PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)**

Sec.

209.1 Authority, purpose, and scope.

209.2 Banks desiring to become member banks.

209.3 Cancellation of Reserve Bank stock.

209.4 Amounts and payments.

209.5 The share register.

**Authority:** 12 U.S.C. 222, 248, 282, 286–288, 321, 323, 327–328, 333, 466.

**§ 209.1 Authority, purpose, and scope.**

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 222, 248, 282, 286–288, 321, 323, 327–328, and 466.

(b) *Purpose.* The purpose of this part is to implement the provisions of the Federal Reserve Act relating to the issuance and cancellation of Federal Reserve Bank stock upon becoming or ceasing to be a member bank, or upon changes in the capital and surplus of a member bank, of the Federal Reserve System.

(c) *Scope.* This part applies to member banks of the Federal Reserve System, to national banks in process of organization, and to state banks applying for membership. National banks and locally-incorporated banks located in United States dependencies and possessions are eligible (with the consent of the Board) but not required to apply for membership under section 19(h) of the Federal Reserve Act, 12 U.S.C. 466.<sup>1</sup>

**§ 209.2 Banks desiring to become member banks.**

(a) *Application for stock or deposit.* Each national bank in process of organization,<sup>2</sup> each nonmember state bank converting into a national bank, and each nonmember state bank applying for membership in the Federal Reserve System under Regulation H, 12 CFR part 208, shall file with the Federal Reserve Bank (Reserve Bank) in whose district it is located an application for stock (or deposit in the case of mutual savings banks not authorized to purchase Reserve Bank stock<sup>3</sup>) in the

Reserve Bank. The bank shall pay for the stock (or deposit) in accordance with § 209.4 of this regulation.

(b) *Issuance of stock; acceptance of deposit.* Upon authorization to commence business by the Comptroller of the Currency in the case of a national bank in organization or upon approval of conversion by the Comptroller of the Currency in the case of a state nonmember bank converting to a national bank, or when all applicable requirements have been complied with in the case of a state bank approved for membership, the Reserve Bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books. In the case of a national or state member bank in organization, such issuance shall be as of the date the bank opens for business. In the case of a mutual savings bank not authorized to purchase Reserve Bank shares, the Reserve Bank shall accept the deposit in place of issuing shares. The bank's membership shall become effective on the date of such issuance or acceptance.

(c) *Location of bank.* (1) *General rule.* For purposes of this part, a national bank or a state bank is located in the Federal Reserve District that contains the location specified in the bank's charter or organizing certificate, or, if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (c)(2) of this section.

(2) *Board determination.* If the location of a bank as specified in paragraph (c)(1) of this section, in the judgment of the Board of Governors of the Federal Reserve System (Board), is ambiguous, would impede the ability of the Board or the Reserve Banks to perform their functions under the Federal Reserve Act, or would impede the ability of the bank to operate efficiently, the Board will determine the Federal Reserve District in which the bank is located, after consultation with the bank and the relevant Reserve Banks. The relevant Reserve Banks are the Reserve Bank whose District contains the location specified in paragraph (c)(1) of this section and the Reserve Bank in whose District the bank is proposed to be located. In making this determination, the Board will consider any applicable laws, the business needs of the bank, the location of the bank's

membership evidenced initially by a deposit. (See § 208.3(a) of Regulation H, 12 CFR part 208.) The membership of the savings bank shall be terminated if the laws under which it is organized are not amended to authorize such purchase at the first session of the legislature after its admission, or if it fails to purchase such stock within six months after such an amendment.

head office, the locations where the bank performs its business, and the locations that would allow the bank, the Board, and the Reserve Banks to perform their functions efficiently and effectively.

**§ 209.3 Cancellation of Reserve Bank stock.**

(a) *Application for cancellation.* Any bank that desires to withdraw from membership in the Federal Reserve System, voluntarily liquidates or ceases business, is merged or consolidated into a nonmember bank, or is involuntarily liquidated by a receiver or conservator or otherwise, shall promptly file with its Reserve Bank an application for cancellation of all its Reserve Bank stock (or withdrawal of its deposit, as the case may be) and payment therefor in accordance with § 209.4.

(b) *Involuntary termination of membership.* If an application is not filed promptly after a cessation of business by a state member bank, a vote to place a member bank in voluntary liquidation, or the appointment of a receiver for (or a determination to liquidate the bank by a conservator of) a member bank, the Board may, after notice and an opportunity for hearing where required under Section 9(9) of the Federal Reserve Act (12 U.S.C. 327), order the membership of the bank terminated and all of its Reserve Bank stock canceled.

(c) *Effective date of cancellation.* Cancellation in whole of a bank's Reserve Bank capital stock shall be effective, in the case of:

(1) Voluntary withdrawal from membership by a state bank, as of the date of such withdrawal;

(2) Merger into, consolidation with, or (for a national bank) conversion into, a State nonmember bank, as of the effective date of the merger, consolidation, or conversion; and

(3) Involuntary termination of membership, as of the date the Board issues the order of termination.

(d) *Exchange of stock on merger or change in location.* (1) *Merger of member banks in the same Federal Reserve District.* Upon a merger or consolidation of member banks located in the same Federal Reserve District, the Reserve Bank shall cancel the shares of the nonsurviving bank (or in the case of a mutual savings bank not authorized to purchase Reserve Bank stock, shall credit the deposit to the account of the surviving bank) and shall credit the appropriate number of shares on its books to (or in the case of a mutual savings bank not authorized to purchase Reserve Bank stock, shall accept an appropriate increase in the deposit of)

<sup>1</sup> If such a bank desires to become a member bank under the provisions of § 19(h) of the Federal Reserve Act, it should communicate with the Federal Reserve Bank with which it desires to do business.

<sup>2</sup> A new national bank organized by the Federal Deposit Insurance Corporation under § 11(n) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)) should not apply until in the process of issuing stock pursuant to § 11(n)(15) of that act. Reserve Bank approval of such an application shall not be effective until the issuance of a certificate by the Comptroller of the Currency pursuant to § 11(n)(16) of that act.

<sup>3</sup> A mutual savings bank not authorized to purchase Federal Reserve Bank stock may apply for

the surviving bank, subject to paragraph (e)(2) of § 209.4.

(2) *Change of location or merger of member banks in different Federal Reserve Districts.* Upon a determination under paragraph (c)(2) of § 209.2 that a member bank is located in a Federal Reserve District other than the District of the Reserve Bank of which it is a member, or upon a merger or consolidation of member banks located in different Federal Reserve Districts,—

(i) The Reserve Bank of the member bank's former District, or of the nonsurviving member bank, shall cancel the bank's shares and transfer the amount paid in for those shares, plus accrued dividends (at the rate specified in paragraph (d) of § 209.4) and subject to paragraph (e)(2) of § 209.4 (or, in the case of a mutual savings bank member not authorized to purchase Federal Reserve Bank stock, the amount of its deposit, adjusted in a like manner), to the Reserve Bank of the bank's new District or of the surviving bank; and (ii) The Reserve Bank of the member bank's new District or of the surviving bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books (or, in the case of a mutual savings bank, by accepting the deposit or an appropriate increase in the deposit).

(e) *Voluntary withdrawal.* Any bank withdrawing voluntarily from membership shall give 6 months written notice, and shall not cause the withdrawal of more than 25 percent of any Reserve Bank's capital stock in any calendar year, unless the Board waives these requirements.

#### § 209.4 Amounts and payments.

(a) *Amount of subscription.* The total subscription of a member bank (other than a mutual savings bank) shall equal six percent of its capital and surplus. Whenever any member bank (other than a mutual savings bank) experiences a cumulative increase or decrease in capital and surplus requiring a change in excess of the lesser of 15 percent or 100 shares of its Reserve Bank capital stock, it shall file with the appropriate Reserve Bank an application for issue or cancellation of Reserve Bank capital stock in order to adjust its Reserve Bank capital stock subscription to equal six percent of the member bank's capital and surplus. Such application shall be filed promptly after the first report of condition that reflects the increase or decrease occasioning the adjustment. In addition, every member bank shall file an application for issue or cancellation of Reserve Bank capital stock if needed in order to adjust its Reserve Bank

capital stock subscription to equal six percent of the member bank's capital and surplus as shown on its report of condition as of December 31 of each year promptly after filing such report.

(b) *Capital Stock and Surplus defined.* Capital stock and surplus of a member bank means the paid-in capital stock<sup>4</sup> and paid-in surplus of the bank, less any deficit in the aggregate of its retained earnings, gains (losses) on available for sale securities, and foreign currency translation accounts, all as shown on the bank's most recent report of condition. Paid-in capital stock and paid-in surplus of a bank in organization means the amount which is to be paid in at the time the bank commences business.

(c) *Mutual savings banks.* The total subscription of a member bank that is a mutual savings bank shall equal six-tenths of 1 percent of its total deposit liabilities as shown on its most recent report of condition. Whenever any member bank that is a mutual savings bank experiences a cumulative increase or decrease in total deposit liabilities as shown on its most recent report of condition requiring a change in its holding of Reserve Bank stock in excess of the lesser of 15 percent or 100 shares, it shall file with the appropriate Reserve Bank an application for issue or cancellation of Reserve Bank capital stock in order to adjust its Reserve Bank capital stock subscription to equal six-tenths of 1 percent of the member bank's total deposit liabilities. Such application shall be filed promptly after the first report of condition that reflects the increase or decrease occasioning the adjustment. In addition, every member bank that is a mutual savings bank shall file an application for issue or cancellation of Reserve Bank capital stock if needed in order to adjust its Reserve Bank capital stock subscription to equal six-tenths of 1 percent of its total deposit liabilities as shown on its report of condition as of December 31 of each year promptly after filing such report. A mutual savings bank that is applying for or has a deposit with the appropriate Reserve Bank in lieu of Reserve Bank capital stock shall file for acceptance or adjustment of its deposit in a like manner.

(d) *Payment for subscriptions.* Upon approval by the Reserve Bank of an application for capital stock (or for a deposit in lieu thereof), the applying bank shall pay the Reserve Bank one-half of the subscription amount plus accrued dividends. For purposes of this

part, dividends shall accrue at the rate of one half of one percent per month calculated on the basis of a 360-day year of twelve 30-day months. Upon payment (and in the case of a national banks in organization or state nonmember bank converting into a national bank, upon authorization or approval by the Comptroller of the Currency), the Reserve Bank shall issue the appropriate number of shares by crediting the bank with the appropriate number of shares on its books. In the case of a mutual savings bank not authorized to purchase Reserve Bank stock, the Reserve Bank will accept the deposit or addition to the deposit in place of issuing shares. The remaining half of the subscription or additional subscription (including subscriptions for deposits or additions to deposits) shall be subject to call by the Board.

(e) *Payment for cancellations.* (1) Upon approval of an application for cancellation of Reserve Bank capital stock, or (in the case of involuntary termination of membership) upon the effective date of cancellation specified in § 209.3(c)(3), the Reserve Bank shall reduce the bank's shareholding on the Reserve Bank's books by the number of shares required to be canceled and shall pay therefor a sum equal to the cash subscription paid on the canceled stock plus accrued dividends (at the rate specified in paragraph (d) of this section), such sum not to exceed the book value of the stock.<sup>5</sup>

(2) In the case of any cancellation of Reserve Bank stock under this Part, the Reserve Bank may first apply such sum to any liability of the bank to the Reserve Bank and pay over the remainder to the bank (or receiver or conservator, as appropriate).

#### § 209.5 The share register.

(a) *Electronic or written record.* A member bank's holding of Reserve Bank capital stock shall be represented by one (or at the option of the Reserve Bank, more than one) notation on the Reserve Bank's books. Such books may be electronic or in writing. Upon any issue or cancellation of Reserve Bank capital stock, the Reserve Bank shall record the member bank's new share position in its books (or eliminate the bank's share position from its books, as the case may be).

(b) *Certification.* A Reserve Bank may certify on request as to the number of

<sup>4</sup> Capital stock includes common stock and preferred stock (including sinking fund preferred stock).

<sup>5</sup> Under sections 6 and 9(10) of the Act, a Reserve Bank is under no obligation to pay unearned accrued dividends on redemption of its capital stock from an insolvent member bank for which a receiver has been appointed or from state member banks on voluntary withdrawal from or involuntary termination of membership.

shares held by a member bank and purchased before March 28, 1942, or as to the purchase and cancellation dates and prices of shares cancelled, as the case may be.

By order of the Board of Governors of the Federal Reserve System, July 6, 1998.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

[FR Doc. 98-18275 Filed 7-10-98; 8:45 am]

BILLING CODE 6210-01-P

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 216

[Regulation P; Docket No. R-0965]

#### Security Procedures

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is rescinding Regulation P, which is no longer necessary since its provisions have been incorporated into Regulation H (Membership of State Banking Institutions in the Federal Reserve System), as issued by the Board elsewhere in today's **Federal Register**. Regulation P requires each bank to adopt appropriate security procedures.

**EFFECTIVE DATE:** October 1, 1998.

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

**SUPPLEMENTARY INFORMATION:** Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803(a)) requires the Board, as well as the other federal banking agencies, to review its regulations and written policies in order to streamline and modify these regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The Board reviewed its Regulation P with this purpose in mind and has adopted its proposal to rescind Regulation P in order to meet the goals of section 303(a).

Regulation P implements the requirements of the Bank Protection Act

of 1968 (BPA). The BPA requires the federal financial institution supervisory agencies to establish minimum standards for bank security devices and procedures to discourage bank crime and to assist in the identification of persons who commit such crimes. 12 U.S.C. 1882. To implement this statute a uniform regulation (Regulation P) was adopted in 1969 by each of the supervisory agencies—Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (now known as the Office of Thrift Supervision), and the Board. As originally proposed, Regulation P included a list of security devices that banks were required to adopt. On March 1, 1991, (55 FR 13069) (1991 Amendments), the supervisory agencies amended their rules to incorporate amendments made to the BPA by the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA) and to address the fact that many of the required security devices had been rendered obsolete by virtue of technological advances.

#### Discussion

The Board's action to rescind Regulation P and incorporate its provisions into Regulation H (12 CFR part 208—Membership of State Banking Institutions in the Federal Reserve System) as published elsewhere in today's **Federal Register**, would not substantively change the requirements of Regulation P. The Board's action to incorporate Regulation P into Regulation H is designed to simplify compliance for State member banks by consolidating regulatory requirements applying to State member banks into one regulation.

The Board published its proposal to rescind Regulation P for comment in the **Federal Register** on March 31, 1997 (61 FR 15299). The Board received 4 comments on the proposal from the following types of institutions:

Trade associations—2  
Federal Reserve Banks—2

Three of the 4 comments received generally supported, or did not object to, rescinding Regulation P. However, one commenter opposed incorporating Regulation P into Regulation H on the basis that Regulation H relates solely to

state member banks and Regulation P addresses security procedures for both state member banks and Federal Reserve Banks. Despite this concern the Board is rescinding Regulation P and incorporating it into Regulation H as proposed because it believes that the Federal Reserve Banks are well aware of the requirements of Regulation P.

#### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this proposal will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will remove a regulation and an interpretation that the Board believes are no longer necessary. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

#### 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 rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

#### List of Subjects in 12 CFR Part 216

Federal Reserve System, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 1882, the Board is amending 12 CFR chapter II, as set forth below:

#### PART 216—[REMOVED]

1. Part 216 is removed.

By order of the Board of Governors of the Federal Reserve System, July 6, 1998.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

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