

## Comptroller of the Currency, Treasury

## § 197.1

paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OCC in writing.

### § 196.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. The OCC may shorten this period under appropriate circumstances.

### § 196.8 Enforcement.

Except as provided in this section, the OCC administers and enforces the Interlocks Act with respect to savings associations and their affiliates, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a savings association is subject to the primary regulation of another Federal depository organization supervisory agency, then the OCC does not administer and enforce the Interlocks Act with respect to that affiliate.

### § 196.9 Interlocking relationships permitted pursuant to Federal Deposit Insurance Act.

A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with another depository organization for a period of up to 10 years if such relationship is approved by the Federal

Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

## PART 197—SECURITIES OFFERINGS

### Sec.

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### APPENDIX A TO PART 197—FORM FOR SECURITIES SALE REPORT

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464 5412(b)(2)(B); 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

SOURCE: 76 FR 49194, Aug. 9, 2011, unless otherwise noted.

### § 197.1 Definitions.

(a) For purposes of this part, the following definitions apply:

(1) *Accredited investor* means the same as in Commission Rule 501(a) (17 CFR 230.501(a)) under the Securities Act, and includes any savings association.

(2) *Commission* means the Securities and Exchange Commission.

(3) *Dividend or interest reinvestment plan* means a plan which is offered solely to existing security holders of the savings association which allows such persons to reinvest dividends or interest paid to them on securities issued by the savings association, and which also may allow additional cash amounts to be contributed by the participants in the plan, provided that the securities to be issued are newly issued, or are

purchased for the account of plan participants, at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of purchase.

(4) *Employee benefit plan* means any purchase, savings, option, rights, bonus, ownership, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for officers, directors or employees.

(5) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a-78jj).

(6) *Filing date* means the date on which a document is actually received during business hours, 9 a.m. to 5 p.m. Eastern Standard Time, by the OCC. However if the last date on which a document can be accepted falls on a Saturday, Sunday, or holiday, such document may be filed on the next business day.

(7) *Issuer* means a savings association which issues or proposes to issue any security.

(8) *Offer; Sale or sell*. For purposes of this part, the term *offer*, *offer to sell*, or *offer for sale* shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. However, these terms shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with the issuer. *Sale* and *sell* includes every contract to sell or otherwise dispose of a security or interest in a security for value. Every offer or sale of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

(9) *Person* means the same as in §192.25 of this chapter, and includes a savings association.

(10) *Purchase* and *buy* mean the same as in §192.25 of this chapter.

(11) *Savings association* means a Federal savings association and includes a Federally-chartered savings association in organization under this chapter, which is granted conditional approval of insurance of accounts by the Federal Deposit Insurance Corporation (FDIC). In addition, for purposes of §197.2 of this part, *savings association* includes any underwriter participating in the distribution of securities of a savings association.

(12) *Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a-77aa).

(13) *Security* means any non-withdrawable account, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization or subscription, transferable share, investment contract, voting trust certificate or, in general, any interest or instrument commonly known as a *security*, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing, except that a *security* shall not include an account insured, in whole or in part, by the FDIC.

(14) *Underwriter* means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission and such term shall also not include any person who has continually held the securities being transferred for a period of two (2) consecutive years provided that the securities sold in any one (1) transaction shall be less than ten percent (10%) of the issued and outstanding securities of the same class. The following shall apply for the

purpose of determining the period securities have been held:

(i) *Stock dividends, splits and recapitalizations.* Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization.

(ii) *Conversions.* If the securities sold were acquired from the issuer for consideration consisting solely of other securities of the same issuer surrendered for conversion, the securities so acquired shall be deemed to have been acquired at the same time as the securities surrendered for conversion.

(iii) *Contingent issuance of securities.* Securities acquired as a contingent payment of the purchase price of an equity interest in a business, or the assets of a business, sold to the issuer or an affiliate of the issuer shall be deemed to have been acquired at the time of such sale if the issuer was then committed to issue the securities subject only to conditions other than the payment of further consideration for such securities. An agreement entered into in connection with any such purchase to remain in the employment of, or not to compete with, the issuer or affiliate or the rendering of services pursuant to such agreement shall not be deemed to be the payment of further consideration for such securities.

(iv) *Pledged securities.* Securities which are *bona fide* pledged by any person other than the issuer when sold by the pledgee, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledgee at the time of the pledge or by the purchaser at the time of purchase.

(v) *Gifts of securities.* Securities acquired from any person, other than the issuer, by gift shall be deemed to have been acquired by the donee when they were acquired by the donor.

(vi) *Trusts.* Securities acquired from the settler of a trust by the trust or acquired from the trust by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the settler.

(vii) *Estates.* Securities held by the estate of a deceased person or acquired from such an estate by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

(viii) *Exchange transactions.* A person receiving securities in a transaction involving an exchange of the securities of one issuer for securities of another issuer shall be deemed to have acquired the securities received when such person acquired the securities exchanged.

(b) A term not defined in this part but defined in another part of this chapter, when used in this part, shall have the meanings given in such other part, unless the context otherwise requires.

(c) When used in the rules, regulations, or forms of the Commission referred to in this part, the term *Commission* shall be deemed to refer to the OCC, the term *registrant* shall be deemed to refer to an issuer defined in this part, and the term *registration statement* or *prospectus* shall be deemed to refer to an offering circular filed under this part, unless the context otherwise requires.

#### § 197.2 Offering circular requirement.

(a) *General.* No savings association shall offer or sell, directly or indirectly, any security issued by it unless:

(1) The offer or sale is accompanied or preceded by an offering circular which includes the information required by this part and which has been filed and declared effective pursuant to this part; or

(2) An exemption is available under this part.

(b) *Communications not deemed an offer.* The following communications shall not be deemed an offer under this section:

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(1) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of Commission Rule 135 (17 CFR 230.135) under the Securities Act;

(2) Subsequent to filing an offering circular, any notice circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of Commission Rule 134 (17 CFR 230.134) under the Securities Act; and

(3) Oral offers of securities covered by an offering circular made after filing the offering circular with the OCC.

(c) *Preliminary offering circular.* Notwithstanding paragraph (a) of this section, a preliminary offering circular may be used for an offer of any security prior to the effective date of the offering circular if:

(1) The preliminary offering circular has been filed pursuant to this part;

(2) The preliminary offering circular includes the information required by this part, except for the omission of information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(3) The offering circular declared effective by the OCC is furnished to the purchaser prior to, or simultaneously with, the sale of any such security.

#### § 197.3 Exemptions.

The offering circular requirement of § 197.2 of this part shall not apply to an issuer's offer or sale of securities:

(a) [Reserved]

(b) Exempt from registration under either section 3(a) or section 4 of the Securities Act, but only by reason of an exemption other than section 3(a)(5) (for regulated savings associations), and section 3(a)(11) (for intrastate offerings) of the Securities Act;

(c) In a conversion from the mutual to the stock form of organization pursuant to part 192 of this chapter, except for a supervisory conversion undertaken pursuant to subpart C of part 192 of this chapter;

(d) In a non-public offering which satisfies the requirements of § 197.4 of this part;

(e) That are debt securities issued in denominations of \$100,000 or more,

which are fully collateralized by cash, any security issued, or guaranteed as to principal and interest, by the United States, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association or by interests in mortgage notes secured by real property;

(f) Distributed exclusively abroad to foreign nationals: *Provided*, That (1) the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States, and (2) such safeguards include, without limitation, measures that would be sufficient to ensure that registration of the securities would not be required if the securities were not exempt under the Securities Act; or

(g) To its officers, directors or employees pursuant to an employee benefit plan or a dividend or interest reinvestment plan, and provided that any such plan has been approved by the majority of shareholders present in person or by proxy at an annual or special meeting of the shareholders of the savings association.

#### § 197.4 Non-public offering.

Offers and sales of securities by an issuer that satisfy the conditions of paragraph (a) or (b) of this section and the requirements of paragraphs (c) and (d) of this section shall be deemed to be transactions not involving any public offering within the meaning of section 4(2) of the Securities Act and §§ 197.3(b) and 197.3(d) of this part. However, an issuer shall not be deemed to be not in compliance with the provisions of this section solely by reason of making an untimely filing of the notice required to be filed by paragraph (c) of this section so long as the notice is actually filed and all other conditions and requirements of this section are satisfied.

(a) *Regulation D.* The offer and sale of all securities in the transaction satisfies the Commission's Regulation D (17 CFR 230.501–230.506), except for the notice requirements of Commission Rule 503 (17 CFR 230.503) and the limitations on resale in Commission Rule 502(d) (17 CFR 230.502(d)).

(b) *Sales to 35 persons.* The offer and sale of all securities in the transaction

satisfies each of the following conditions:

(1) Sales of the security are not made to more than 35 persons during the offering period, as determined under the integration provisions of Commission Rule 502(a) (17 CFR 230.502(a)). The number of purchasers referred to above is exclusive of any accredited investor, officer, director or affiliate of the issuer. For purposes of paragraph (b) of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization which was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person.

(2) All purchasers either have a pre-existing personal or business relationship with the issuer or any of its officers, directors or controlling persons, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement.

(c) *Filing of notice of sales.* Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to this section, the issuer, shall file with the OCC's Securities and Corporate Practices Division, a report describing the results of the sale of securities as required by §197.12(b) of this part.

(d) *Limitation on resale.* The issuer shall exercise reasonable care to assure that the purchasers of the securities

are not underwriters within the meaning of §197.1(a)(14) of this part, which reasonable care shall include, but not be limited to, the following:

(1) Reasonable inquiry to determine if the purchaser is acquiring the securities for the purchaser or for other persons;

(2) Written disclosure to each purchaser prior to the sale that the securities are not offered by an offering circular filed with, and declared effective by, the OCC pursuant to §197.2 of this part, but instead are being sold in reliance upon the exemption from the offering circular requirement provided for by this section; and

(3) Placement of a legend on the certificate, or other document evidencing the securities, indicating that the securities have not been offered by an offering circular filed with, and declared effective by, the OCC and that due care should be taken to ensure that the seller of the securities is not an underwriter within the meaning of §197.1(a)(14) of this part.

#### **§ 197.5 Filing and signature requirements.**

(a) *Procedures.* An offering circular, amendment, notice, report, or other document required by this part shall, unless otherwise indicated, be filed in accordance with the requirements of §§192.115(a), 192.150(a)(6), 192.155, 192.180(b), and Form AC, General Instruction B, of this chapter.

(b) *Number of copies.* (1) Unless otherwise required, any filing under this part shall include four copies of the document, one manually signed copy with exhibits and three conformed copies with exhibits, to be filed as follows:

(i) For a *de novo* savings association, with the appropriate District Counsel office; and

(ii) For an existing savings association, with the OCC's Securities and Corporate Practices Division.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, four copies of the offering circular used shall be filed with the OCC, as described in (b)(1).

(3) After the effective date of an offering circular, an offering circular

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which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until 4 copies have been filed with the OCC in the manner required.

(c) *Signature.* (1) Any offering circular, amendment, or consent filed with the OCC pursuant to this part shall include an attached manually signed signature page which authorizes the filing and has been signed by:

- (i) The issuer, by its duly authorized representative;
- (ii) The issuer's principal executive officer;
- (iii) The issuer's principal financial officer;
- (iv) The issuer's principal accounting officer; and
- (v) At least a majority of the issuer's directors.

(2) Any other document filed pursuant to this part shall be signed by a person authorized to do so.

(3) At least one copy of every document filed pursuant to this part shall be manually signed, and every copy of a document filed shall:

- (i) Have the name of each person who signs typed or printed beneath the signature;
- (ii) State the capacity or capacities in which the signature is provided;
- (iii) Provide the name of each director of the issuer, if a majority of directors is required to sign the document; and
- (iv) With regard to any copies not manually signed, bear typed or printed signatures.

### § 197.6 Effective date.

(a) Except as provided for in paragraph (d) of this section, an offering circular filed by a savings association shall be deemed to be automatically declared effective by the OCC on the twentieth day after filing or on such earlier date as the OCC may determine for good cause shown.

(b) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed.

(c) The period until automatic effectiveness under this section shall be stated at the bottom of the facing page of the Form OC or any amendment.

(d) The effectiveness will be delayed if a duly authorized amendment, telegram confirmed in writing, or letter states that the effective date is delayed until a further amendment is filed specifically stating that the offering circular will become effective in accordance with this section.

(e) An amendment filed after the effective date of the offering circular shall become effective on such date as the OCC may determine.

(f) If it appears to the OCC at any time that the offering circular includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, then the OCC may pursue any remedy it is authorized to pursue under section 5(d) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(d)) or section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818), including, but not limited to, institution of cease-and-desist proceedings.

### § 197.7 Form, content, and accounting.

(a) *Form and content.* Any offering circular or amendment filed pursuant to this part shall:

(1) Be filed under cover of Form OC, which is under part 192 of this chapter;

(2) Comply with the requirements of Items 3 and 4 of Form OC and the requirements of all items of the form for registration (17 CFR part 239) that the issuer would be eligible to use were it required to register the securities under the Securities Act;

(3) Comply with all item requirements of the Form S-1 (17 CFR part 239) for registration under the Securities Act, if the association issuing the securities is not in compliance with the OCC's regulatory capital requirements during the time the offering is made;

(4) Where a form specifies that the information required by an item in the Commission's Regulation S-K (17 CFR part 229) should be furnished, include such information and all of the information required by Item 7 of Form PS, which is under part 192 of this chapter;

(5) Include after the facing page of the Form OC a cross-reference sheet listing each item requirement of the

form for registration under the Securities Act and indicate for each item the applicable heading or subheading in the offering circular under which the required information is disclosed;

(6) Include in part II of the Form OC the applicable undertakings required by the form for registration under the Securities Act;

(7) If the issuer has not previously been required to file reports pursuant to section 13(a) of the Exchange Act or §197.18 of this part, include in part II of Form OC the following undertaking: “The issuer hereby undertakes, in connection with any distribution of the offering circular, to have a preliminary or effective offering circular including the information required by this part distributed to all persons expected to be mailed confirmations of sale not less than 48 hours prior to the time such confirmations are expected to be mailed”;

(8) In offerings involving the issuance of options, warrants, subscription rights or conversion rights within the meaning of §197.1(a)(8) of this part, include in part II of Form OC an undertaking to provide a copy of the issuer’s most recent audited financial statements to persons exercising such options, warrants or rights promptly upon receiving written notification of the exercise thereof;

(9) Include as supplemental information and not as part of the Form OC and only with respect to *de novo* offerings, a copy of the application for permission to organize as submitted to the OCC for Federally-chartered associations, or a copy of the application for insurance of accounts as submitted to the FDIC for state-chartered associations; and

(10) In addition to the information expressly required to be included by this section, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) *Accounting requirements.* To be declared effective an offering circular or amendment shall satisfy the accounting requirements in subpart A of part 193 of this chapter.

#### § 197.8 Use of the offering circular.

(a) An offering circular or amendment declared effective by the OCC shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than 16 months prior to such use.

(b) An offering circular filed under §197.5(b)(3) of this part shall not extend the period for which an effective offering circular or amendment may be used under paragraph (c) of this section.

(c) If any event arises, or change in fact occurs, after the effective date and such event or change in fact, individually or in the aggregate, results in the offering circular containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the offering circular not misleading under the circumstances, then no offering circular, which has been declared effective under this part, shall be used until an amendment reflecting such event or change in fact has been filed with, and declared effective by, the OCC.

#### § 197.9 Escrow requirement.

(a) Any funds received in an offering which is offered and sold on a best efforts all-or-none condition or with a minimum-maximum amount to be sold shall be held in an escrow or similar separate account until such time as all of the securities are sold with respect to a best efforts all-or-none offering or the stated minimum amount of securities are sold in a minimum-maximum offering.

(b) If the amount of securities required to be sold under escrow conditions in paragraph (a) of this section are not sold within the time period for the offering as disclosed in the offering circular, all funds in the escrow account shall be promptly refunded unless the OCC otherwise approves an extension of the offering period upon a showing of good cause and provided that the extension is consistent with the public interest and the protection of investors.

#### § 197.10 Unsafe or unsound practices.

(a) No person shall directly or indirectly,

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(1) Employ any device, scheme or artifice to defraud,

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(3) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of a savings association.

(b) Violations of this section shall constitute an unsafe or unsound practice within the meaning of section (3)(a) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1462a(a), and section 8 of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1818.

(c) Nothing in this section shall be construed as a limitation on the applicability of section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) or Rule 10b-5 promulgated thereunder (17 CFR 240.10b-5).

### § 197.11 Withdrawal or abandonment.

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state the grounds upon which it is made. Any document withdrawn will not be removed from the files of the OCC, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the OCC for a period of nine months and has not become effective, the OCC may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this part or be withdrawn within 30 days after the date of such notice. When a filing is abandoned, the filing will not be removed from the files of the OCC, but will be marked "Declared abandoned by the OCC on (date)."

### § 197.12 Securities sale report.

(a) Within 30 days after the first sale of the securities, every six months after such 30 day period and not later than 30 days after the later of the last

sale of securities in an offering pursuant to § 197.2 of this part or the application of the proceeds therefrom, the issuer shall file with the OCC, a report describing the results of the sale of the securities and the application of the proceeds, which shall include all of the information required by Form G-12 set forth appendix A to this part and shall also include the following:

(1) The name, address, and docket number of the issuer;

(2) The title, number, aggregate and per-unit offering price of the securities sold;

(3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees;

(4) The aggregate and per-unit dollar amounts of the net proceeds raised, and the use of proceeds therefrom; and

(5) The number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities after the issuance of the securities or termination of the offer.

(b) Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to § 197.4 of this part, the issuer shall file with the OCC a report describing the results of the sale of securities, which shall include all of the information required by Form G-12 set forth at appendix A to this part, and shall also include the following:

(1) All of the information required by paragraph (a) of this section; and

(2) A detailed statement of the factual and legal grounds for the exemption claimed.

### § 197.13 Public disclosure and confidential treatment.

(a) Any offering circular, amendment, exhibit, notice, or report filed pursuant to this part will be publicly available. Any other related documents will be treated in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and part 4 of this chapter.

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(b) Any requests for confidential treatment of information in a document required to be filed under this part shall be made as required under Commission Rule 24b-2 (17 CFR 240.24b-2) under the Exchange Act.

### § 197.14 Waiver.

(a) The OCC may waive any requirement of this part, or any required information:

(1) Determined to be unnecessary by the OCC;

(2) In connection with a transaction approved by the OCC for supervisory reasons, or

(3) Where a provision of this part conflicts with a requirement of applicable state law.

(b) Any condition, stipulation or provision binding any person acquiring a security issued by a savings association which seeks to waive compliance with any provision of this part shall be void, unless approved by the OCC.

### § 197.15 Requests for interpretive advice or waiver.

Any requests to the OCC for interpretive advice or a waiver with respect to any provision of this part shall satisfy the following requirements:

(a) A copy of the request, including any attachments, shall be filed consistent with the procedures in §197.5 of this part;

(b) The provisions of this part to which the request relates, the participants in the proposed transaction, and the reasons for the request, shall be specifically identified or described; and

(c) The request shall include a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

### § 197.16 Delayed or continuous offering and sale of securities.

Any offer or sale of securities under §197.2 of this part may be made on a continuous or delayed basis in the future, if:

(a) The securities would satisfy all of the eligibility requirements of the Commission's Rule 415, 17 CFR 230.415; and

(b) The association issuing the securities is in compliance with the OCC's

regulatory capital requirements during the time the offering is made.

### § 197.17 Sales of securities at an office of a savings association.

Sales of securities of a savings association or its affiliates at an office of a savings association may only be made in accordance with the provisions of 12 CFR 197.76.

### § 197.18 Current and periodic reports.

(a) Each savings association which files an offering circular which becomes effective pursuant to this part, after such effective date, shall file with the OCC periodic and current reports on Forms 8-K, 10-Q and 10-K as may be required by section 13 of the Exchange Act (15 U.S.C. 78m) as if the securities sold by such offering circular were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l). The duty to file periodic and current reports under this section shall be automatically suspended if and so long as any issue of securities of the savings association is registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l). The duty to file under this section shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such offering circular became effective, if, at the beginning of such fiscal year, the securities of each class to which the offering circular relates are held of record by less than three hundred persons and upon the filing of a Form 15.

(b) For purposes of registering securities under section 12(b) or 12(g) of the Exchange Act, an issuer subject to the reporting requirements of paragraph (a) of this section may use the Commission's registration statement on Form 10 or Form 8-A or 8-B as applicable.

### § 197.19 Approval of the security.

Any securities of a savings association which are not exempt under this part and are offered or sold pursuant to an offering circular which becomes effective under this part, are deemed to be approved as to form and terms for purposes of §197.3 of this chapter.

**§ 197.21**

**12 CFR Ch. I (1-1-12 Edition)**

**§ 197.21 Filing of copies of offering circulars in certain exempt offerings.**

A copy of the offering circular, or similar document, if any, used in connection with an offering exempt from the offering circular requirement of § 197.2 by reason of § 197.3(e) or § 197.4 of this part shall be mailed to the OCC, in the manner described in § 197.5, within 30 days after the first sale of such securities. Such copy of the offering circular, or similar document, is solely for the information of the OCC and shall not be deemed to be "filed" with the OCC pursuant to § 197.2 of this part. The mailing to the OCC of such offering circular, or similar document, shall not be a pre-condition of the applicable exemption from the offering circular requirements of § 197.2 of this part.

**APPENDIX A TO PART 197—FORM FOR SECURITIES SALE REPORT**

Office of the Comptroller of the Currency  
[Form G-12]

*Securities Sale Report Pursuant to § 197.12*

OCC No. \_\_\_\_\_  
Issuer's Name: \_\_\_\_\_  
Address: \_\_\_\_\_

If in organization, state the date of FDIC certification of insurance of accounts: \_\_\_\_\_

State the title, number, aggregate and per-unit offering price of the securities sold: \_\_\_\_\_

State the aggregate and per-unit dollar amounts of actual itemized offering ex-

penses, discounts, commissions, and other fees: \_\_\_\_\_

State the aggregate and per-unit dollar amounts of the net proceeds raised: \_\_\_\_\_

Describe the use of proceeds. If unknown, provide reasonable estimates of the dollar amount allocated to each purpose for which the proceeds will be used: \_\_\_\_\_

State the number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities at the close or termination of the offering: \_\_\_\_\_

For a non-public offering, also state the factual and legal grounds for the exemption claimed (attach additional pages if necessary): \_\_\_\_\_

For a non-public offering, all offering materials used should be listed: \_\_\_\_\_

Person to Contact: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

This issuer has duly caused this securities sale report to be signed on its behalf by the undersigned person.

Date of securities sale report \_\_\_\_\_  
Issuer: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Instruction: Print the name and title of the signing representative under his or her signature. Ten copies of the securities sale report should be filed, including one copy manually signed, as required under 12 CFR 197.5.

Attention

Intentional misstatements or omissions of fact constitute violations of Federal law (see 18 U.S.C. 1001 and 12 CFR 197.180(b)).